SUPREME COURT OF THE UNITED STATES.

No. 300.

FREDERICK P. JAMES, ABRAM M. BREWER, E. BRADFORD GRENLEAF, PHILIP S. JUSTICE, ELKANAH COBB, JOHN V. BEAN, PHILIP WILSON, AND J. HOWARD MITCHELL, APPELLANTS,

vs.

THE MILWAUKEE AND MINNESOTA RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

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a UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, A. Scott Sloan, clerk of the circuit court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals and are correct transcripts therefrom, and of the whole thereof, now on file and remaining of record in my office.

In testimony whereof, I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukee, in the said district of Wisconsin, this 16th day of November, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the said United States the ninetieth.

[L.S.] A. SCOTT SLOAN, *Clerk.*

1 UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the circuit court of the United States of America for the district of Wisconsin, begun and held according to law at the city of Milwaukee in said district of Wisconsin, on the second Monday, (being the tenth day) of April, A. D. 1865.

Present and presiding the honorable Samuel F. Miller, associate justice of the Supreme Court of the United States, assigned to said circuit, and the honorable Andrew G. Miller, district judge.

On the nineteenth day of the said term, to wit, on the seventeenth day of July, the following proceedings were had, to wit:

Bill of complaint.

FREDERIC P. JAMES AND ABRAM M. BREWER, copartners under the firm of F. P. James & Co., E. Bradford Greenleaf, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, and J. Howard Mitchell, copartners under the name of Philip S. Justice & Co.,

vs.

THE MILWAUKEE AND MINNESOTA RAILROAD Company, and Selah Chamberlain, and the La Crosse and Milwaukee Railroad Co.

Be it remembered, that heretofore, to wit, on the twentieth day of April, A. D. 1863, the above-named complainants filed in the office of the clerk of the circuit court of the United States of America for the district of Wisconsin, their bill of complaint against the above-named defendants in the words and figures following, to wit:

2 Circuit court of the United States, district of Wisconsin.

Complaint, filed April, 1863.

F. P. JAMES and OTHERS
vs.
THE MILWAUKEE and MINNESOTA RAILROAD Company and others.

To the judges of the circuit court of the United States for the district of Wisconsin, in equity:

Frederic P. James and Abram M. Brewer, copartners under the firm of F. P. James & Co., of the city of New York; E. Bradford Greenleaf, of the city of New York; Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, and J. Howard Mitchell, copartners under the name of Philip S. Justice & Co., of the said city of New York, and all citizens of the State of New York, bring this their bill on their own behalf, and in behalf of all the creditors of the La Crosse and Milwaukee Railroad Company, who have a claim or lien upon the railroad of said company, from the city of Milwaukee, in the State of Wisconsin, to the city of La Crosse, in said State, or any part thereof, or on the property pertaining thereto, known as the La Crosse
3 and Milwaukee railroad, but now sometimes called the Milwaukee and Minnesota railroad, who shall come in and seek relief by, and contribute to the expenses of, this suit, against the Milwaukee and Minnesota Railroad Company, a corporation claiming to be incorporated under the laws of the State of Wisconsin, and located and having a place of business in said State, and the La Crosse and Milwaukee Railroad Company, a corporation duly organized under and by virtue of the laws of the State of Wisconsin, and doing business in said State, and Selah Chamberlain, a citizen of the State of Ohio. And thereupon your orators complain and say that the several actings and doings hereinafter stated and set forth, so far as they purport to be acts or doings of your orators, are true of their own knowledge, and as to all other matters and things hereinafter stated and set forth your orators are informed and believe the same to be true.

Your orators complain and say that heretofore, to wit, on the 5th day of October, A. D. 1858, in the district court of the United States for the district of Wisconsin, by the consideration of the said court, Edwin C. Litchfield, a citizen of the State of New York, recovered judgment against the La Crosse and Milwaukee Railroad Company for the sum of twenty-six thousand three hundred and fifty three dollars and fifty-one cents ($26,353 51) for the damages which he had sustained, as by the record of said judgment in the office of the clerk of said court will more fully appear. That on or about 17th day of December, 1858, for the purpose of obtaining satisfaction of the said judgment, said Litchfield sued out of said court a writ of execution, called a *fieri facias*, which was properly indorsed and directed to the marshal of the said district of Wisconsin, and duly delivered to him,

by which the said marshal was commanded, in substance, that of the goods and chattels, lands and tenements of said La Crosse and Milwaukee Railroad Company he should cause the amount of said
4 judgment to be made, and that he should have the money before the judge of the said court, at the city of Milwaukee, on the 1st Monday of January, A. D. 1859, to satisfy the said judgment. That the said marshal, on or about the first Monday of January, 1859, returned said writ wholly unsatisfied, indorsing thereon, in substance, no property found whereon to levy and satisfy this writ, or any part thereof, as by the said writ and the return of the said marshal indorsed thereon, filed in the office of the clerk of the said court, will more fully appear. That the said judgment still remains in full force and effect, not reversed or satisfied or otherwise vacated, and the said La Crosse and Milwaukee Railroad Company has not paid the same to the said Edwin C. Litchfield, or to the said Russell Sage, but has hitherto wholly neglected and refused so to do. That afterwards, to wit, on the 3d day of May, A. D. 1859, the said Edwin C. Litchfield duly and legally assigned and transferred said judgment, for a valuable consideration, to Russell Sage, and that the said Sage on the 14th day of April, 1863, duly assigned and transferred said judgment to your orators F. P. James & Co., who are now the owners thereof. That there is now actually due to the said James & Co., upon the aforesaid judgment, the sum of $26,353 51, together with the interest thereon from 5th day of October, A. D. 1858.

And your orators further show that heretofore, to wit, on the 5th day of April, A. D. 1859, in the district court of the United States for the district of Wisconsin, by the consideration of the said court, Nathaniel S. Bouton, a citizen of the State of Illinois, recovered judgment against the said La Crosse and Milwaukee Railroad Company for the sum of seven thousand nine hundred and thirty-seven dollars and thirty-seven cents ($7,937 37) for the debt and costs, and for damages which he had sustained, as by the record of the said judgment in the office of the clerk of said court will more fully appear. That on or about the 23d day of April, A. D. 1862, for the purpose of obtaining satisfaction of the said judgment, said Bouton sued out
5 of the said court a writ of execution, called a *fieri facias*, which was properly indorsed and directed to the marshal of the said district of Wisconsin, and duly delivered to him, by which the said marshal was commanded, in substance, that of the goods and chattels, lands and tenements of said La Crosse and Milwaukee Railroad Company he should cause the amount of said judgment to be made, and that he should have the money before the judge of the said court, at the city of Milwaukee, on the first Monday of May, 1862, to satisfy the said judgment. That the said marshal on or about the first Monday of May, A. D. 1862, returned said writ wholly unsatisfied, indorsing thereon, in substance, no property found whereon to levy and satisfy said writ or any part thereof, as by the said writ and the return of the said marshal indorsed thereon, filed in the office of the clerk of the said court, will more fully appear.

And your orators further show that the said judgment still remains

in full force and effect, not reversed or satisfied or otherwise vacated; and the said La Crosse and Milwaukee Railroad Company has not paid the same to said Nathaniel S. Bouton, but has hitherto wholly neglected and refused to do so.

And your orators further show that afterwards, to wit, on the 28th day of October, A. D. 1862, the said Nathaniel S. Bouton duly and legally assigned and transferred said judgment, for a valuable consideration, to your orators Frederick P. James and Abram M. Brewer, who are now the owners thereof.

And your orators further show that there is now actually due to your orators Frederick P. James and Abram M. Brewer upon the aforesaid judgment the sum of $7,937 37, together with the interest thereon from the said 5th day of April, A. D. 1859.

And your orators further show that heretofore, to wit, on the 21st day of September, A. D. 1858, in the circuit court of Milwaukee county, Wisconsin, by the consideration of the said court, your orators Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, and J. Howard Mitchell, citizens of the State of New York,
6 as plaintiffs, recovered judgment against the La Crosse and Milwaukee Railroad Company the sum of two hundred and thirty-five dollars and thirty-three cents for the damages and costs which they had sustained, as by the record of the said judgment in the office of the clerk of said court will more fully appear. That on or about the 28th day of May, A. D. 1859, for the purpose of obtaining satisfaction of the said judgment, said plaintiffs caused to be issued a writ, called an execution, which was properly indorsed and directed to the sheriff of the county of Milwaukee and duly delivered to him, by which the said sheriff was commanded, in substance, that of the goods and chattels, lands and tenements of said La Crosse and Milwaukee Railroad Company he should cause the amount of said judgment to be made. That the said sheriff on or about the 23d day of July, 1859, returned said execution wholly unsatisfied, indorsing thereon, in substance, that he could not find any property in his county belonging to the said La Crosse and Milwaukee Railroad Company whereof to make the amount of said execution or any part thereof, and return unsatisfied, as by the said writ and the return of the said sheriff indorsed thereon, filed in the office of the clerk of the said court, will more fully appear. That the said judgment still remains in full force and effect, not reversed or satisfied or otherwise vacated, and the said La Crosse and Milwaukee Railroad Company has not paid the same to the said Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, and J. Howard Mitchell, but has hitherto wholly neglected and refused to do so.

And you orators further show that there is now actually due to the said Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, and J. Howard Mitchell upon the aforesaid judgment the sum of $285 33, together with the interest thereon from the said 21st day of September, A. D. 1858.

And your orators further show that heretofore, to wit, on the 10th day of September, A. D. 1858, in the county court of Milwaukee

county, Wisconsin, by the consideration of the said court, your orator E. Bradford Greenleaf recovered judgment against the La Crosse
7 and Milwaukee Railroad Company the sum of eight hundred and forty dollars and six cents for the damages and costs which he had sustained, as by the records of the said judgment in the office of the clerk of said court will more fully appear. That on or about the 8th day of August, A. D. 1860, for the purpose of obtaining satisfaction of the said judgment, said Greenleaf caused to be issued a writ, called an execution, which was properly indorsed and directed to the sheriff of the county of Milwaukee and duly delivered to him, by which the said sheriff was commanded, in substance, that of the goods and chattels, lands and tenements of the said La Crosse and Milwaukee Railroad Company he should cause the amount of said judgment to be made. That the said sheriff, on or about the 23d day of August, 1860, returned said execution wholly unsatisfied, indorsing thereon, in substance, that he could not find any property in his county belonging to the said La Crosse and Milwaukee Railroad Company whereof to make the amount of said execution or any part of it, and return unsatisfied, as by the said writ and the return of the said sheriff indorsed thereon, filed in the office of the clerk of said court, will more fully appear. That the said judgment still remains in full force and effect, not reversed or satisfied or otherwise vacated, and that the said La Crosse and Milwaukee Railroad Company has not paid the same to the said E. Bradford Greenleaf, but has hitherto wholly neglected and refused to do so.

And your orators further show that there is now actually due to the said E. Bradford Greenleaf upon the aforesaid judgment the sum of $840 06, with the interest thereon from the 10th day of September, 1860.

8 Your orators further show that heretofore, to wit, before the indebtedness accrued on which said judgments were obtained, the State of Wisconsin incorporated the La Crosse and Milwaukee Railroad Company, with power to create and incur debts or obligations, and to construct a railroad from the city of Milwaukee to the city of La Crosse, on the Mississippi river, and to acquire and hold property real and personal, and with power to mortgage the real and personal property of said company. That in pursuance of said authority the said La Crosse and Milwaukee Railroad Company did acquire and become possessors of in its own right a large and valuable property, real and personal, known as the La Crosse and Milwaukee railroad, but now sometimes called the Milwaukee and Minnesota railroad, the last-named company claiming to be a successor to the first named, embracing in the term railroad the line of railroad commencing in the city of Milwaukee, in the State of Wisconsin, and running in a westerly direction through Portage to La Crosse, in said State of Wisconsin, with all the tracts, pieces, or parcels of land constituting the roadway, turnouts, engine-houses, workshops, depots, and other buildings, and all other lands and real estate pertaining to said railroad, the superstructure of said railroad, also all locomotive engines, rolling stock, equipments of every kind and description, and all the materials, tools,

implements, utensils, and the other personal property used in connection with said road; also all the franchises, rights, liberties, and privileges relating to said railroad company. That said La Crosse and Milwaukee Railroad Company did mortgage its real and personal property as described in the deeds hereinafter named, which your orators beg to refer to, and also to the judicial or other foreclosure proceedings in or connected with said mortgage or trust deeds, and to produce them, if it becomes necessary or desirable so to do, during the pendency of this bill—

1st. The said La Crosse and Milwaukee Railroad Company made a first mortgage of their real and personal property, commonly known as the first mortgage eastern division, to Francis A. Palmer,
9 esq., in trust, to secure the payment of $1,000,000, June 13th, 1854, under which mortgage was issued only $950,000; and the company, by operation of a sinking fund, have paid $75,000, leaving now due and outstanding under said mortgage $875,000, with interest from Nov. 1, 1862.

2d. The said company made a second mortgage of its real and personal property, commonly known as the city of Milwaukee mortgage, dated to secure the repayment of bonds issued by the city of Milwaukee to aid in building said railroad, under which there is now due $314,000, with interest from 1863.

3d. Said compeny made a third mortgage on its real and personal property, commonly known as the land grant mortgage, to Bronson, Soutter & Knapp, trustees, to secure the repayment of $10,000,000, dated December 31, 1856, under which mortgage was issued only $4,000,000; but the United States district court for the district of Wisconsin, in which court said Bronson, Soutter & Knapp sought to foreclose said mortgage, found due from said company January 13, 1862, only the sum of $3,690,600 84, with interest from January 13th, 1862.

4th. Said company made a fourth mortgage on its real and personal property, commonly known as the second mortgage eastern division, to Bronson & Soutter, trustees, to secure the repayment of $1,000,000, dated August 17th, 1857, but the United States district court for the district of Wisconsin, in which court said Bronson & Soutter sought to foreclose said mortgage, found due from said company on the 13th day of January, 1862, only the sum $565,260 05, with interest from January 13th, 1862; that said Bronson & Soutter, trustees, appealed from the decree of said district court to the Supreme Court of the United States, which appeal is still pending and undetermined.

5th. Said company made a fifth mortgage on its real and per-
10 sonal property, commonly called the Helfeinstein mortgage, to J. Albert Helfeinstein, esq., to secure the repayment of $1,000,000, dated September 26th, 1857; that under said mortgage only the nominal sum of about $364,000 was ever issued.

Your orators further show that about the first day of June, in the year 1858, the said La Crosse and Milwaukee Railroad Company was indebted to a large amount, and greatly embarrassed in its pecuniary affairs, and that a large floating debt had accumulated against the

said company for rolling stock and materials furnished, and labor performed for said company, which remained unpaid, and was unsecured by any mortgage or other security on the road or other property of the company, and that a large number of persons along the line of said railroad in Wisconsin had mortgaged their farms to the said company, to aid in the construction of the said road, which farm mortgages had deen used by the company, with the stipulation on its part to pay the interest accruing thereon, and that considerable amounts of interest on such mortgages were then due and unpaid, and that still larger amounts were then accruing. That the aggregate nominal amount of debt existing against said company in the month of June. 1858, including funded and secured debt, was near or quite ten millions of dollars, exclusive of the farm mortgage debt above named, amounting to about one million one hundred and ten thousand dollars additional, exclusive of interest. That at that time Selah Chamberlain, one of the defendants, was in possession of the said road, under a contract, lease, or mortgage to secure him the amount due him from said company on contracts for the construction of said road.

Your orators further show that the directors of the La Crosse and Milwaukee Railroad Company, on the 1st day of June, 1858, authorized an issue of the bonds of said company to the amont of two millions of dollars, to be secured by a mortgage upon the entire line of the road from Milwaukee to La Crosse, including all their real and personal property appertaining to said line of said road, payable
thirty years from date, and bearing interest at the rate of
11 seven per cent. per annum from the 1st day of July, 1858,
payable semi-annually after the first year, the first payment of interest to be made on the 1st day of July, 1859. Said bonds to be printed in the usual form with coupons, and the mortgage security for the same to be executed by the president and secretary of the said company to William Gould, esq., trustee, for said bondholders. And the said resolutions were afterwards, on the 15th day of June, 1858, so amended as to make William Barnes, esq., trustee, in the place of William Gould, and the number and denomination of the bonds to be issued were so changed that the first payment of interest should become due on the first day of January, A. D. 1859, instead of the 1st of July, 1859, as by the said resolutions, reference being thereunto had, will more fully appear. That on or about the 21st day of June, 1858, the president and secretary of said company did execute a trust deed in the name of said company to the said William Barnes. And the said president and secretary, in the name of said company, did make, sign, seal, and execute bonds to the amount of two millions of dollars, secured by said trust deed—one thousand bonds of one thousand dollars each, fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, all dated the 21st day of June, 1859, with interest at the rate of seven per centum per annum, payable semi-annually, on the 1st day of January and July in each year, with coupons for said interest, respectively, attached. That on the 11th day of August, A. D.

1858, the president and secretary of said La Crosse and Milwaukee Railroad Company, in the name of said company, executed and delivered to said William Barnes, a certain indenture of supplementary mortgage.

Your orators charge, and upon information and belief state, the fact to be that said mortgage, or trust deed, of the *of the* 21st of June, to the said William Barnes, as also the supplementary mortgage of the 11th of August, were issued in fraud of the creditors and stockholders of said company, and without authority of law. That said mortgages or deeds of trust were not executed to secure any amount borrowed or owing by said company; but for the purpose and with the design of bringing about a speedy sale of said road and its
12 franchises, and cutting off the stockholders in said company, and to hinder, delay, and defraud the creditors of the said La Crosse and Milwaukee Railroad Company, and passing the title and property in or to the road and its franchises to some of the directors of said company and their friends. That in the month of May, 1858, N. P. Stanton, Eli Perry, William Watson, D. V. N. Radcliff, Artemus Fish, George W. Luther, J. H. Shears, all of Albany, New York, and John P. McGregor and William C. Smith, of Wisconsin, were elected directors for the said La Crosse and Milwaukee Railroad Company for the then ensuing year. On the 8th day of June, 1858, Fish and Watson resigned, and William A. Guest was elected a director, and on the 15th day of June, Albert C. Gunnison was elected a director to fill the vacancy. On the same day Radcliff resigned, and Alfred Noxon was elected in his place. That about the 22d day of September, 1858, said Shears resigned as director, and one William Platt was elected in his place. That on the said 15th day of June, A. D. 1858, the said Gunnison and Guest, with said Noxon, Luther, and Shears, five of said directors, at a meeting, which they called a meeting of the board of directors of said company, held in the city of Albany, State of New York, by resolution directed a modification of the bonds to be issued under said trust deed so as to make the first instalment of interest payable on the 1st day of January, 1859, instead of the 1st day of July, 1859, which modification was made that they might the more speedily carry out their fraudulent design of selling out the road and its franchises on said trust deed. At that same meeting in Albany aforesaid, by resolution of said directors, William A. Guest, Albert C. Gunnison, and Alfred Noxon were appointed a committee of said board of directors, with full power to do all things which might lawfully be done by the board of directors in the collection, settlement and compromise of all claims and demands due to the company, and in the payment, settlement, and adjustment of all claims, debts, and demands due from the company, and to sell, dispose of, or negotiate any part of the bonds of said company, secured by its said mortgage, at such rates and
13 in such quantities as to them should seem proper and for the best interest of said company. That said committee soon thereafter made a settlement with Selah Chamberlain of a claim which he had against said company, and gave him the promissory

note of said company for twenty thousand dollars, payable in two or three months, and agreed to deposit with him four hundred thousand dollars of said bonds as collateral security, and did about that time deposit with him two hundred thousand dollars of said bonds. They paid him five thousand dollars in cash, which your orators have been informed and believe, and therefore state, was raised by the hypothecation or pretended sale of one hundred thousand dollars of said third mortgage bonds; that in the month of October or November the said committee pretended to deliver to said Selah Chamberlain two hundred thousand dollars more of said third mortgage bonds as collateral security for said twenty thousand dollar note. And afterwards, to wit, on or about the 10th day of January, 1859, said bonds were divided up between the said committee and their friends, without being sold at a public sale, as follows: Albert C. Gunnison, seventy-five thousand dollars; the said Platt, one hundred thousand dollars; the said Guest, fifty thousand dollars; the said Luther, fifty thousand dollars, the said Noxon, seventy-five thousand dollars; H. G. Gilbert, fifty thousand dollars; and portions of said bonds afterwards came to the possession of the said Stanton and Alden and said Gilbert; but in what amounts complainants are unable to state; and that said bonds were not all taken directly in the names of said persons above named, but were taken in the names of other persons, their agents or accomplices in the above-mentioned transaction. Complainants further show unto the court, upon like information and belief, that in the further execution of said illegal and fraudulent design, at an illegal meeting of the directors, in the city of Albany, in the State of New York, held on the 13th day of December, 1858, after reciting that they had received information from Milwaukee that a very large amount of the most valuable property of said company in the city of Milwaukee, including its machine-shops, engine-houses, and repair-shops, which had cost the company one hundred and fifty thousand dollars,
14 was in imminent peril of being lost to the company in consequence of the non-payment of the sum of ten thousand dollars, being the amount due on contract for the purchase of the premises, and that the company were entirely destitute of means to save from total loss the said property, and that sales of property indispensable to the company had already been made, but which might still be redeemed, and that the company had not until a then recent date been aware of the condition of said property, and that arrangements theretofore made with Mr. Chamberlain to furnish money to protect the property of the company from sale and for defraying the expenses and salaries incident to their organization, had been repudiated by said Chamberlain, it was "resolved that the president be, and he is hereby, directed to borrow or loan a sum of money, not exceeding fifteen thousand dollars, to be used for the purposes above recited, and to sell, pledge, hypothecate any bonds or securities belonging to the company for the purpose of raising said amount upon the best terms he may be able to obtain the same."

And your orators further show, upon information and belief, that the president of said company borrowed of William Gould, du-

ring said month of December, the sum of two thousand five hundred dollars, and of William Watson the further sum of two thousand five hundred dollars, for which he gave the said Gould and Watson the promissory notes of the company, payable in a few days thereafter, (your orators are unable to state the time more particularly,) and gave to each of said persons fifty thousand dollars of said third mortgage bonds as security for the payment of said notes. That in like manner, and at or about the same time, the said president borrowed of Seth R. Foster the sum of three thousand dollars, and of Henry G. Gilbert the sum of seven thousand five hundred dollars; for each of which sums he executed and delivered the promissory notes of the company, payable in a few days after the date of said note, and deposited the third mortgage bonds with each as security for the payment of said notes, at the rate of five per centum of their par value, making in the aggregate the sum of fifteen thousand five hundred dollars money borrowed, and as security for which bonds as aforesaid were deposited to the amount of three hundred and ten thousand dollars. And the said complainants, on information and belief, aver that the said notes were given, and the securities pledged, with the understanding between the said directors and the said Watson, Gould, Gilbert, and Foster, that said notes would not be paid nor the said securities be in any manner redeemed by said railroad company. Your orators, on their information and belief, further show to the court that the round house and other property in the said city was, at the time of the passage of said resolution, subject to certain incumbrances and claims for unpaid portions of the purchase money, but it was utterly false, as the said directors in Albany well knew, that said company was in imminent peril of losing any portion of its said property by reason of such incumbrances or claims. That John P. McGregor and William E. Smith aforesaid, the two directors of said company, resident in Wisconsin, had agreed with the owners or holders of such incumbrances, by which, upon payment to them of a small portion thereof, time was to be given to the said company for one and two years within which to pay the residue thereof. That the said two directors had also made an arrangement or agreement with the said Chamberlain, lessee, to advance the amount necessary to be paid to procure such extension. And said Chamberlain was ready and willing to pay the same whenever requested. That in the case of one incumbrance upon such property the said Chamberlain, lessee, had paid the amount thereof, before said money was so borrowed as aforesaid, all of which facts the said president and the said directors at Albany then well knew. That the said Stanton, president, after having borrowed said money in manner as aforesaid, and in the latter part of the month of December, 1858, did visit the said city of Milwaukee for the ostensible purpose of paying off said incumbrances; that he was immediately informed of the arrangements made to prevent the loss of the said property, and was then urged by the said resident directors to return to Albany, and with the said money pay the notes aforesaid, and in that manner redeem said bonds, and save their total loss to the

said company; that said president utterly refused so to do, and insisted upon paying out a portion of said money upon said incumbrances, for the fraudulent purpose of preventing the pay-
16 ment of said notes and the redemption of said bonds; that he paid between five and six thousand dollars upon one of said incumbrances, and insisted upon paying to said Chamberlain the amount he had advanced to take up another incumbrance; that in the first case the said president paid but about one-half of the amount due thereon, and that the payment was not sufficient to prevent the loss of said property to said company, and was not intended so to do; and in the other case all proceedings against said company had been already stayed by the action of said Chamberlain. And the said complainants, on their information and belief, further show to the court that it was utterly false, as pretended by said directors, that the said company were destitute of means to save said property from total loss; that, on the contrary thereof, there was in the possession or under the control of the members of said board, and of the said Alden, at the very time said money was borrowed, more than twelve thousand dollars in money, besides a large amount of other securities belonging to said company, all of which the said directors then well knew. That at the very time the said president was in Milwaukee, as aforesaid, there was in his possession, or under his immediate control, and belonging to said company, moneys enough to have fully discharged the incumbrances or claims described in the preamble and resolutions aforesaid, in addition to the amount so borrowed as aforesaid; that he was requested and strongly urged to make such payments, and to return the borrowed money, and so save the bonds of said company, which was utterly refused by the said president.

And your orators further show to the court, upon information and belief, that the said directors and the holders of said bonds, so unlawfully and illegally issued, in further prosecution of the said fraudulent design, combined and confederated together to defraud, hinder, and delay the creditors of the said company, and particularly your orators, complainants in this suit, by borrowing the said money, and depositing the said bonds as security, never intending to pay the said notes at their maturity, in order that the said bonds should be sold, and they enabled thereby to purchase them for a mere nominal consideration, well knowing that said notes would not be paid at
17 their maturity, and that there was no necessity whatsoever on the part of said company for such sacrifice of its corporate property; that the said president never pretended to apply but about seven thousand five hundred dollars of said money to the purposes for which the same was so borrowed as aforesaid, but that he and said directors appropriated the residue thereof to their own private and individual purposes. And your orators further show, upon information and belief, that, in pursuance of such fraudulent purpose, the said Gould and said Watson, and the said Foster and Gilbert, were induced by said directors, on or about the
day of , 1859, without even offering said bonds at public

or private sale in any manner whatever, to divide the said bonds among themselves and others, their confederates, the said Gould taking fifty thousand dollars for his note of $2,500, and the said Watson taking fifty thousand dollars for his note of $2,500, thereof; that the said Gilbert delivered seventy-five thousand dollars of the bonds in his hands to one Roscius R. Kennedy, who was the agent of the said Noxon, and received therefor $3,750, and fifty thousand dollars to one J. M. Lovitt, who received therefor $2,500, and fifteen thousand to one J. M. Gilbert, who received therefor $750, five thousand dollars to one Templeton, who received therefor $250—in all he received $7,250—the said parties paying to said Gilbert five cents on the dollar of the par value thereof. And the said Foster took sixty thousand dollars of said bonds in payment of the said note of $3,000 to him. That at the time said three hundred and ten thousand dollars of said bonds were so divided among said persons, there was then in the hands or under the control of said directors more money belonging to said company than was necessary to pay said notes in full, and so have prevented and saved the loss of said bonds to said company, and their property to their creditors, all of which the said directors and their confederates then well knew. And these complainants, on their information and belief, further show that the said Noxon and Guest, the said committee, disposed of other of said bonds to their friends and confederates either without any consideration whatsoever, or at the mere nominal rate of five
18 cents on the dollar, in further prosecution of their fraudulent conspiracy, but that they are unable now to set forth the particulars thereof with certainty.

Your orators are informed and believe, and so charge the fact to be, that only about two hundred thousand dollars of said third mortgage bonds were issued to the bona fide creditors of said company, and that said bonds so issued were exchanged for the indebtedness of said company in the State of Wisconsin, and to citizens of the State of Wisconsin, at par, and in payment of a small amount of interest to the land-grant bondholders, while the rest of the fifteen hundred thousand dollars in bonds pretended to have been issued by said directors were all fraudulently issued and disposed of by said directors.

And your orators further show, upon information and belief, that the directors of the said La Cross and Milwaukee Railroad Company, in pursuance of said fraudulent scheme, made no provision for the payment of the interest upon said third mortgage bonds, which interest became due and payable on the 1st January, 1859, and the said Barnes, as trustee, on or about the 1st February, 1859, commenced the foreclosure of said mortgage by advertisement, and (having previously given the notice required by law in that behalf) on the 21st day of May, 1859, sold at public auction, at the court-house, in the city and county of Milwaukee, in the State of Wisconsin, all the property, rights, privileges, franchises, things in action, and other things in said mortgage and supplementary mortgage to him, said Barnes, described. And the said William Barnes, trustee, then and there, at said sale, became the purchaser thereof for the sum of one million

five hundred and ninety-three thousand dollars and thirty-three cents, payable in said bonds, and as trustee for said bondholders, no other person or body having made any bid whatever for the same. That immediately thereafter, to wit, on the 23d day of May, 1859, the said bondholders proceeded to organize a new corporation under and by virtue of the laws of the State of Wisconsin, and took the name of the Milwaukee and Minnesota Railroad Company, and the said Barnes then and there conveyed to said last-named company all the
19 property and things by him purchased as aforesaid, and the said company now claims to be the owner of said property, in fraud of the rights of your orators and the stockholders and creditors of said La Crosse and Milwaukee Railroad Company.

Your orators further show, upon information and belief, that the said third mortgage bonds have never had any market value, and have never been quoted at the stock boards of the country, but their circulation and transmission from hand to hand has been exclusively confined to private transactions, and to parties thoroughly and well advised of their origin and all facts and circumstances connected with their issue.

Your orators further charge, upon information and belief, that said stock of the Milwaukee and Minnesota Railroad Company, into which said bonds were converted, has never had any marketable value, and has never been quoted at the stock boards, and the only sales or transfers have been private transactions, and between parties who were fully notified and advised of the fraudulent character of said stock, and of the facts above set forth.

Your orators further show, upon information and belief, that said Milwaukee and Minnesota Railroad Company have not as yet been in possession of any portion of said road, but that said road has been held adversely to said company; but your orators are informed and believe that said company has combined and confederated with the trustees of the second mortgage on the eastern division of said road, or their agent or attorneys, with the view to obtain the possession of said road; and said company now threatens to take possession of said road and its franchises under said fraudulent and corrupt organization, and appropriate said property and its franchises to its own use. Your orators further show, upon information and belief, that the said Barnes, trustee, in said mortgage named, was fully advised of the fraudulent issue of said bonds, and was confederating with the said directors for the sale of said road, and that the bonds for the payment of which said road was sold were, a large majority of them, illegally issued and held by the directors of the old company and
20 their immediate friends on a mere nominal consideration, and were fraudulent and void; that in pursuance of said original scheme, the road was sold at the par value of said bonds and interest, and the costs of sale, so as more effectually to prevent the stockholders of said company from redeeming the property from said sale, and to secure the road and franchises to said confederates and fraudulent bondholders, and to defraud, hinder, delay, and defeat your orators from collecting their just claims against said road and property.

Your orators are informed and believe that the said directors of the La Crosse and Milwaukee Railroad Company, in pursuance of said fraudulent scheme, issued to said Barnes, trustee, fifty thousand dollars of said bonds, to compensate him as trustee, and for services in foreclosing said mortgage, and that counsel were employed to assist in said foreclosure, and paid by said directors out of said bonds belonging to said company.

Your orators further say, upon information and belief, that, at the time of said sale of said road, the directors of said company had not negotiated or disposed of the amount of bonds for which said road was sold, but that a large amount of said bonds were in the hands of said directors, or their agent, unnegotiated, and which had been fraudulently negotiated and disposed of by said directors since said sale, which were counted in to make up the amount of the bid made by said trustee, to swell the amount necessary to be paid to redeem said property from said sale, and more effectually to cut off, hinder, delay, and defraud the creditors and stockholders of the said La Crosse and Milwaukee Railroad Company.

Your orators further show, that heretofore, to wit, on the 6th day of July, 1860, the United States district court for the district of Wisconsin, on the motion of said Bronson and Soutter, trustees of said so-called second mortgage bonds, eastern division, appointed a receiver of all the railroad of the said La Crosse and Milwaukee Railroad Company, being all the line of railroad extending from the city of Milwaukee to the city of La Crosse, in the State of Wisconsin, and of all its property, real and personal, privileges, and franchises; that from and since that day, to the present time, said premises
21 have been in the possession and operated by the receiver of said court. That since that time the cause, and the jurisdiction over said receiver, has been transferred, by act of Congress, to the circuit court of the United States for the district of Wisconsin. That the premises are of great value, exceeding the sum of $2,000,000, an much exceeding the amount due on the mortgages above described, exclusive of said third mortgage, so called, to said Barnes, trustee, which your orators claim, by reason of the facts and allegations herein contained, to be void as against creditors, or, if not wholly void, to have been cancelled and merged into the fee. That the income of said premises has been large, about the sum of $2,724,291 28 in gross to January 1st, 1863, since the road has been in the hands of the receiver. Your orators are entirely ignorant of what the net earnings are, but they believe the operating expenses do not exceed one-half of the gross income. That, notwithstanding this large net income, the said receiver fails to pay the interest on said mortgages, or on any one of them, except the annual interest on said first mortgage eastern division, and on the said city mortgage, the annual interest on both amounting to $93,980, a mere fraction of the net income of the road. Said receiver has also paid a part of one installment of semi-annual interest on the land-grant mortgage, viz: the sum of $70,000; that on all the other named mortgages, except said third mortgage, so called, void, cancelled, or merged as afore-

said, the interest is accumulating, and consequently and very largely increasing said mortgage liens, as against your orators, and are now about $828,000 larger, by accumulations of unpaid interest, than when said receiver took possession thereof.

Your orators justly fear, and therefore charge, that if the premises are continued unsold in the hands of said court or its receiver, the accumulations of interest will be so great as to absorb or destroy all the value of said premises over and above said mortgages, and thus prevent your orators from collecting or in any way receiving the payment of their claims.

Your orators allege that if said premises can be speedily
22 sold, subject to all of said mortgage liens, except said so-called 3d mortgage, void or cancelled by said sale, or merged as aforesaid, there are purchasers for said premises, who will assume and pay said mortgages last above-named, and will pay a sufficient sum in addition thereto to pay your orators' claims in whole or in part.

Your orators further aver that since the sale of said premises by and to said Barnes the said La Crosse and Milwaukee Railroad Company has virtually ceased to exist, and has left no other assets except such as are embraced in said mortgage deeds or some of them.

And your orators further show that the defendant Selah Chamberlain has or claims some interest in the premises, the exact extent or nature of which is to your orators unknown.

In consideration whereof, and forasmuch as your orators are entirely remediless in the premises, according to the strict rules of the common law, and can only have relief in a court of equity, where matters of this nature are properly cognizable and relievable: Your orators humbly pray that you will take their case into consideration, and upon finding the allegations therein contained to be true, to order and decree that all of the property, real and personal, franchises, and privileges of the La Crosse and Milwaukee Railroad Company, or which was theirs at the time of said sale by said Barnes, May 21st, 1859, now in the possession of the receiver of said United States circuit court, and more fully described in the orders of said court appointing said receiver, and in the mortgage and trust deeds above recited, to which your orators beg leave to refer and make a part of this their bill, may be sold, subject to the prior claims under said mortgage above described as: 1st. The first mortgages eastern division to Francis A. Palmer, trustee; 2d. The second mortgage
23 to the city of Milwaukee; 3d. The third or land-grant mortgage to Bronson, Soutter & Knapp, trustees; 4th. The fourth or second mortgage eastern division, to Bronson and Soutter, trustees; 5th. The fifth, or Heilfeinstein mortgage, to J. Albert Helfeinstein, trustee. And that the proceeds of said sale be brought into court to be divided according to the legal priorities of your orators and the other claimants thereto.

And to the end that the said defendants may, if they can, show why your orators should not have the relief hereby prayed, and may full, true, and perfect answers make to this your orators' bill. And com-

plainants pray that said sale under said third mortgage may be decreed to be fraudulent and void, and the said Milwaukee and Minnesota Railroad Company be decreed to take nothing under said sale, and that said Milwaukee and Minnesota Railroad Company be perpetually enjoined and restrained from taking possession of, or exercising any control over, the property and franchises mentioned in said third mortgage, or from interfering in any manner with said road, or its franchises, or the management thereof.

And your orators pray the court that a receiver may be appointed by the court to take possession of and manage and control all the property and franchises, things in action, and effects of the said Milwaukee and Minnesota Railroad Company, and the La Crosse and Milwaukee Railroad Company, under the rules and regulations and directions of this court until the final decree of this court.

May it please your honors to grant unto your orators a writ of injunction, to be issued out of and under the seal of this honorable court, directed to the said La Crosse and Milwaukee Railroad Company, and the Milwaukee and Minnesota Railroad Company, and their attorneys, counsellors, solicitors, officers, agents, trustees, and servants, therein and thereby, under a certain penalty in the said writ to be expressed, commanding and enjoining them, and each of them, in manner as aforesaid, until the further order of this honorable court.

May it also please your honors to grant unto your orators a writ of subpœna, issued out of and under the seal of this honorable
24 court, to be directed to the said La Crosse and Milwaukee Railroad Company, and the Milwaukee and Minnesota Railroad Company, to Selah Chamberlain, commanding them, at a certain day and under a certain penalty, therein to be inserted, personally to be and appear before this honorable court, then and there to answer all and singular the premises, and to stand to and abide by and perform such order and decree therein as to your honors shall seem agreeable to equity and good conscience.

And your orators humbly pray that they may have such further or other relief in the premises as to your honors shall seem meet and this case may require.

FINCHES, LYNDE & MILLER,
Complainants' Solicitor.
WM. P. LYNDE & N. A. COWDREY,
Of Counsel.

25 UNITED STATES OF AMERICA,
Southern District of New York, ss:

——— ———, being duly sworn, deposes and says, each for himself, that he is one of the above-named complainants; that he has read the foregoing bill of complaint, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be on the information or belief of the complainants, and as to those matters he believes it to be true.

Subscribed and sworn to before me this day of April, 1863.

25½ And on the same day entered in the order and rule book an order that the defendants show cause by Friday, the twenty-fourth day of April instant, at ten o'clock in the forenoon, why an injunction should not be issued and a receiver be appointed, according to the prayer of the bill on file. Whereupon a subpœna issued, returnable on the first Monday in June next, in the words and figures following, to wit:

26 UNITED STATES OF AMERICA,
District of Wisconsin, ss:

The President of the United States of America to the Milwaukee and Minnesota Railroad Company, the La Crosse and Milwaukee Railroad Company, and Selah Chamberlain, greeting:

You are hereby commanded that you personally appear before the judges of the circuit court of the United States of America for the district of Wisconsin, in our court of chancery, in and for the district aforesaid, on the first Monday of June next ensuing, at Milwaukee, to answer to a bill of complaint exhibited against you in our said court by Frederic P. James, Abram M. Brewer, E. Bradford Greenleaf, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, and J. Howard Mitchell; and to do further and receive what our said court shall have considered in that behalf: and this you are not to omit under the penalty which may ensue.

This process of subpœna is directed to the marshal of this district, who is hereby commanded to serve the same upon the said Milwaukee and Minnesota Railroad Company, La Crosse and Milwaukee Railroad Company, and Selah Chamberlain, if to be found in his district, and due return thereof make.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, at the city of Milwaukee, in the said district, this twentieth day of April, in the year of our Lord one thousand eight hundred and sixty-three, and of our independence the eighty-seventh.

[L. S.] J. M. MILLER, *Clerk.*

FINCHES, LYNDE & MILLER, *Solicitors.*

It is ordered by our said court that the said Milwaukee and Minnesota Railroad Company, La Crosse and Milwaukee Railroad Company, and Selah Chamberlain, the defendants aforesaid, do enter their appearance in this suit, in the clerk's office, on or before the day and time at which this subpœna is returnable, as aforesaid; otherwise the bill filed may be taken as confessed. And it is further ordered that they show cause by Friday, the twenty-fourth day of April instant, at ten o'clock in the forenoon, why an injunction should not be issued and a receiver be appointed, according to the prayer of the bill on file.

27 *Return.*

And afterwards, and on or before the return day thereof, the marshal made return of the subpœna herein, indorsed thereon as follows, to wit:

Served on the within-named Milwaukee and Minnesota Railroad Company, by delivering Moses Kneeland, president of said company, personally a copy of this subpœna; and served on the within-named La Crosse and Milwaukee Railroad Company by delivering Daniel Wells, jr., president of said company, personally a copy of this subpœna, and served on the within-named Selah Chamberlain by delivering him personally a copy of this subpœna this 22d day of April, 1863.

D. C. JACKSON, *U. S. Marshal.*

Fees $7 32.

Appearance.

And afterwards, to wit, on the first day of June, 1863, came the Milwaukee and Minnesota Railroad Company, by its solicitor, Matt. H. Carpenter, and filed its appearance in the words and figures following, to wit:

U. S. circuit court, dist. of Wisconsin.

FREDERIC P. JAMES *et al.*
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company *et al.*

I hereby enter my appearance for the Milwaukee and Minnesota Railroad Company, one of the defendants, to the bill of complaint of the above-named complainants.

MATT. H. CARPENTER, *Sol. for s'd Def't Co.*

Rule to plead.

And on the same day came the complainants, by their solicitor, and entered in the rule and order book an order in the words and figures following, to wit:

FREDERIC P. JAMES, ABRAM M. BREWER, E. Bradford Greenleaf, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, and J. Howard Mitchell
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company, the Milwaukee and Minnesota Railroad Company, and Selah Chamberlain.

28 The subpœna in this action having been served, returned on motion of Finches, Lynde & Miller, solicitors for complainants, it is ordered

that the defendants plead answer or demur to the complainants' bill of complaint on file in this cause, by the first Monday of July next, or said bill will be taken as confessed.

Dated June 1st, 1863.

FINCHES, LYNDE & MILLER,
Compl's Sol's.

Demurrer.

And afterwards, to wit, on the 6th day of July, A. D. 1863, came the defendant Milwaukee and Minnesota Railroad Company, by its solicitor, Mr. Carpenter, and filed its demurrer in the words and figures following, to wit:

In circuit court of the United States for the 9th circuit and district of Wisconsin, in equity.

FREDERIC P. JAMES *et als.*
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company and others, def'ts.

The demurrer of the Milwaukee and Minnesota Railroad Company, one of the defendants, to the bill of complaint of Frederic P. James, Abram M. Brewer, E. Bradford Greenleaf, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, and J. Howard Mitchell, complainants.

The defendant by protestation not confessing or acknowledging all or any of the matters and things in the said complainants' bill to be true in manner and form as the same are therein set forth and alleged, doth demur thereto, and for cause of demurrer shows that the said complainants have not in and by their said bill made or stated such a case as doth or ought to entitle them or either of them to any such discovery or relief as is thereby sought and prayed for from or against this defendant. And because said bill of complaint contains
29 no proper or sufficient prayer for relief, and is not in form of a bill of compiaint, and the same does not properly pray that the said defendant may be compelled to answer the same, and the said bill is not signed by counsel. Wherefore this defendant demands the judgment of this honorable court whether it shall be compelled to make any further or other answer to the said bill or any of the matters and things therein contained, and prays to be hence dismissed, with his reasonable costs in this behalf sustained.

MATT. H. CARPENTER, *Sol. for s'd Def't.*

I hereby certify that I am a counsellor of the said court above named; that in my opinion the foregoing demurrer is well founded in point of law.

MATT. H. CARPENTER, *of Counsel for s'd Def't.*

DISTRICT OF WISCONSIN, *State of Wisconsin, ss:*

A. Fleming, being first duly sworn, says, on oath, that he is a director in the Milwaukee and Minnesota Railroad Company above named, and makes this verification in its behalf. And this affiant further says that said demurrer is not interposed for delay.

A. FLEMING.

Subscribed and sworn to before me this 6th day of July, A. D. 1863.

WILLIAM J. C. FOSTER,
Notary Public, Mil. Co. Wis.

Demurrer set down for arg't.

And afterwards, to wit, on the 7th day of September, 1863, came the complainants, by their counsel, and on their motion it is ordered by the court that they have leave to set the demurrer of the defendant, Milwaukee and Minnesota Railroad Company down for argument on the first Monday of October next.

And on the same day the complainants entered in the order and rule book an order setting down the demurrer for argument in the words and figures following, to wit:

FREDERIC P. JAMES *et al.*
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company *et als.*

30 On motion of Finches, Lynde & Miller, solicitors for complainants, (leave of the court being first had,) it is ordered that the demurrer filed in this cause be, and the same is hereby, set down for hearing on the first Monday of October, A. D. 1863.

Dated Sept. 7th, 1863.

FINCHES, LYNDE & MILLER,
Sol'rs for Compl'ts.

Motion to have demurrer heard by both judges.

And afterwards, to wit, at a stated term, held at Madison, in said district, on the second Monday of November, A. D. 1863, to wit, on the 10th day of November, 1863, came the defendant, the Milwaukee and Minnesota Railroad Company, by its counsel, and moves the court that the hearing of the demurrer in this cause be heard before both judges of said court, and objects to its being heard at this time in the absence of the presiding judge.

And also came the parties, by their counsel, and by consent (saving to the defendant its objection to the hearing in the absence of the presiding judge) it is ordered by the court that the hearing of the demurrer be had at Milwaukee on the first Monday of December next, with the same effect as if heard in open court this day, and that the order made upon the said hearing be entered as of the last day of this term.

Order setting demurrer down for argument.

And afterwards, to wit, on the 4th day of April, 1864, came the complainants, by Messrs. Finches, Lynde & Miller, their solicitors, and entered in the order and rule book an order setting down for argument the demurrer of the Milwaukee and Minnesota Railroad Company to the complainant's bill of complaint at the next stated term of this court, which said order is in the words and figures following, to wit:

U. S. cir. court Wis., first Monday of April, 1864.

FREDERIC P. JAMES, ABRAM M. BREWER, E. Bradford Greenleaf, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, and J. Howard Mitchell,
vs.
MILWAUKEE AND MINNESOTA RAILROAD Company, La Crosse and Milwaukee Railroad Company, and Selah Chamberlain.

31 On motion of Finches, Lynde & Miller, compl'ts' sol'rs, ordered that the demurrer of the Milwaukee and Minnesota Railroad Company to the complainants' bill of complaint be, and is hereby, set down for argument at the next stated term of this court.

FINCHES, LYNDE & MILLER, *Compl'ts' Sol'rs.*

Answer.

And afterwards, to wit, on the 22d day of April, A. D. 1864, came the defendant, the Milwaukee and Minnesota Railroad Company, by its counsel, Mr. Carpenter, and on its motion it is ordered by the court that said defendant have leave to withdraw its demurrer to this bill, and to file its answer thereto. And on the same day came the said defendant, by its counsel, and filed its answer to this bill in the words and figures following, to wit:

32 Circuit court of the United States for the 9th circuit and district of Wisconsin, in equity.

F. P. JAMES and others
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company and others.

The separate answer of the Milwaukee and Minnesota Railroad Company, one of the defendants' to the bill of complaint, of Frederick P. James, Abram M. Bowers, E. Bradford Greenleaf, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, J. Howard Mitchell, complainants.

This defendant, the Milwaukee and Minnesota Railroad Company, one of the defendants to said bill of complaint, now, and at all times hereafter, saving and reserving unto itself all benefit and advantage

of exception which can or may be had or taken to the many errors: uncertainties, and other imperfections in the said complainants' said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for it to make answer unto, this defendant answering saith, That the several actings and doings hereinafter stated and set forth, so far as they purport to be acts or doings of this defendant, are true to its own knowledge; and as to all other matters and things hereinafter stated and set forth, this defendant is informed and believes the same to be true, and states the same upon said knowledge and said information and belief, respectively.

33 1. This defendant admits, upon information and belief, that such are the facts, that the said Litchfield, the said Bouton, the said Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, and J. Howard Mitchell, and the said E. Bradford Greenleaf did obtain the several judgments as set forth in said bill of complaint; but this defendant, further answering, says that whether the said several proceedings have been had on said respective judgments as in said bill of complaint alleged, and whether the said complainants are now the legal or equitable owners of either or any of said judgments as in said bill of complaint stated, except said Litchfield judgment, this defendant has no knowledge, nor information sufficient to form a belief, and can, therefore, neither admit nor deny the said statements in that behalf, but leaves the said complainants to make such proof thereof as they may be able; but this defendant, on information and belief, says that the said Litchfield judgment now equitably belongs to this defendant, and that the same was purchased by one Russell Sage, while president of this defendant, from said Litchfield, really for the benefit of this defendant, and that the said complainants have no right or title to, or interest in, said Litchfield judgment; and the said Litchfield is now a stockholder of this defendant to the amount of two hundred and fifty shares, which he holds instead of said judgment.

2. This defendant admits, upon information and belief, that such are the facts, that the said La Crosse and Milwaukee Railroad Company made, executed, and delivered the several mortgages to Palmer, to or for the benefit of the city of Milwaukee, to Bronson, Soutter, and Knapp, to Bronson and Soutter, and to Helfenstein, as stated in said bill of complaint; and admits that in June, 1848, Selah

34 Chamberlain, one of the defendants, was in possession of the said road under a contract of lease, which the said Chamberlain pretended was to secure him certain amounts claimed by him against said company; but this defendant answering, as aforesaid, says that the said lease to said Chamberlain was made, executed, and delivered to him, and accepted by him for the purpose and with the design and intention to thereby hinder, delay, and defraud the creditors of said company; and that the same therefore was fraudulent and void. And this defendant, further answering, says that in a certain cause pending in the district court of the United States for the district of Wisconsin, in equity, on the 11th February, A. D. 1854, in which Newcomb Cleveland was complainant, and the said La Crosse

and Milwaukee Railroad Company, Selah Chamberlain and others, were defendants, and in which cause the said district court had full jurisdiction of and over the subject matter of said cause and the said parties thereto, and in which cause both said company and said Chamberlain had appeared and submitted to the jurisdiction of said district court, the said court made, rendered, recorded, and enrolled its decree, annulling, setting aside, and vacating said lease to said Chamberlain absolutely, and as to all persons and parties, so that the same should not thereafter be of any force or effect whatever. And this defendant, further answering, says that the said Selah Chamberlain is not, and at the time of the exhibiting of the said bill of complaint in this cause was not, a lien creditor of the said La Crosse and Milwaukee Railroad Company, and has no interest in, claim to, or lien or incumbrance on any of the railroad property, franchises, or other
35 things mentioned in said bill of complaint, and this defendant insists that the said Chamberlain is not a proper or necessary party to said bill of complaint. And this defendant here and now takes and insists on its objection to said bill of complaint; that it has improperly joined said Chamberlain as a party, although he has no interest therein, and claims that said bill of complaint should be dismissed as to said Chamberlain. And this defendant claims and prays the same benefit of this objection as if it had made said objection in a demurrer to said bill.

And this said defendant further objects that the said bill of complaint cannot be maintained, as to the said judgments rendered in favor of said Justice, Cobb, Bean, Wilson, and Mitchell, by the circuit court of Milwaukee county, Wisconsin, and that said Justice, Cobb, Bean, Wilson, and Mitchell are improperly joined as complainants in said bill, and that said bill is defective for that reason, and ought to be dismissed. And further, this defendant, answering on information and belief, says, that said John V. Bean, one of said complainants and one of the persons in whose favor said last-named judgment was rendered, has departed this life, and that the said bill of complaint is for that reason defective; and this defendant claims the same benefit of these objections as if the same had been taken by this defendant in a demurrer to said bill of complaint. And this defendant further insists that the said bill cannot be maintained in this court as to the said judgments rendered by the county court for Milwaukee county in favor of said E. Bradford Greenleaf, and that said Greenleaf is improperly joined as a complainant in said bill, and this defendant claims and prays the same benefit from this objection as if this defendant had taken the same in a demurrer to said bill.

36 The said defendant, further answering the said bill of complaint, on information and belief says: That the La Crosse and Milwaukee Railroad Company was from the 1st day of January, 1850, until the 21st day of May, A. D. 1860, a corporation existing under the laws of the State of Wisconsin, and that during that time its business affairs were managed by a board of directors; that about the 21st day of June, A. D. 1858, said company was indebted to a large amount of floating debt, accumulated for rolling stock and materials

furnished and provided, and labor performed for said company, which was unsecured upon the railroad or other property of said company; and that a large number of farmers along the line of said company's railroad had before then loaned their credit, in form of bonds and mortgages, to aid said company in the construction and equipment of its said railroad; which bonds and mortgages had been before then used by the said company, with a stipulation on its part, with and to said farmers, to pay the interest that might accrue thereon, and that a large sum of said interest which said company was bound to pay as aforesaid had become due, and the said company was unable to pay the same, and proceedings were threatened against such farmers to enforce payment of such interest; and that the said company, for the purpose of securing said indebtedness and said interest, and for other legitimate and necessary purposes, did, on or about the day and year last aforesaid, make, sign, seal, execute, and perfect, ready to be negotiated, sold, delivered, and transferred in payment of said indebtedness of said company, and in payment of said interest, and to be used in and about the necessary and proper business of said company, one thousand bonds of one thousand dollars each, and fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, all dated that day and year, and payable in A. D. 1885, with interest at seven per cent., payable semi-annually on the 1st day of January and July in each year, with coupons for said interest to said bonds respectively attached; and that to secure the payment of said bonds, and thereby enable said company to use said bonds for the purposes aforesaid, the said company did, on the said 21st day of June, 1858, make, execute, sign, acknowledge, and perfect its mortgage or deed of trust in due form of law, and as it by law had authority to do, to William Barnes, to secure the payment of said last-named bonds and the interest thereon, in and by which said mortgage or deed of trust, said company mortgaged to said Barnes, trustee, for the purposes aforesaid, "all and singular the railroad of said company, commencing in the city of Milwaukee and running from thence to La Crosse, a distance of about two hundred miles," a part of which road had been constructed and was then in full operation, and the residue was then in process of construction, including all and singular the several tracts, pieces or parcels of land which then were, or thereafter might be, or constitute the site of the roadways, turnouts, engine-houses, workshops, depots and other buildings, and all the other lands and real estate which then constituted, or might thereafter constitute, or be a part of, or appertain to said railroad, whether then made or to be made thereafter, and all the engine-houses, workshops, depots and other buildings, and all the other improvements on or appertaining to said railroad, whether then made or built or to be built and made thereafter; and all and singular the locomotive engines and other rolling-stock, and all the other equipments of every kind and description which had then been or might thereafter be procured for or used on said railroad, and all the materials, tools, implements, utensils, and other personal property which had then been or might thereafter be procured for or used in connexion with such railroad;

and also all and singular the rights, liberties, privileges, and franchises of said railroad to La Crosse, together with other property and things in said mortgage described; and that about the said 21st day of June, A. D. 1858, said mortgage was by said company duly and legally delivered to said Willam Barnes, trustee, and was by said trustee thereafter caused to be duly and legally recorded in the office of the secretary of state of the State of Wisconsin, and, as the plaintiff says on information and belief, in the offices of the registers of deeds in the several counties through which said railroad
37 passes and was then located. That on the 11th day of August, A. D. 1858, the said company made, signed, sealed, and delivered to said Barnes, trustee, a certain indenture of supplemental mortgage or deed of trust, in and by which said company recited and affirmed the terms and conditions of said mortgage or deed of trust hereinbefore set forth, and dated June 21st, 1858, and did convey to said Barnes, as trustee as aforesaid, in addition to the things in said first mortgage conveyed, the following, that is to say: All and singular the rights, privileges, liberties and franchises of said company of every kind and description; and also all lands granted or intended to be granted to said company under and by virtue of the act of Congress and the act of the legislature of the State of Wisconsin, in said supplementary mortgage mentioned, and also all the hereditaments and appurtenances belonging or in anywise appertaining to the lands and real estate therein conveyed or intended to be conveyed; and also all and singular the stock, railroad or other bonds, bills of exchange, promissory notes, accounts, causes of action, demands and choses in action of whatsoever nature, which might be owned or in which said company might have an interest on such day as such company might first make default in the payment of the interest or principal or any part thereof, which might thereafter become due on any of the said bonds issued or to be issued by said company, and to secure which said mortgage was given. That immediately thereafter the said Barnes caused said supplementary mortgage to be recorded as in the same offices as the said first named deed of trust or mortgage to said Barnes was recorded as hereinbefore set forth; a copy of which said first mortgage, or deed of trust, and a copy of which said supplementary mortgage or deed of trust to said Barnes are attached hereto, and marked respectively Exhibit No. 1 and Exhibit No. 2. That immediately thereafter said company commenced to deliver the said last-named bonds, so secured as aforesaid, in payment of the indebtedness of said company, and for the other purposes contemplated by said company in the issue thereof, and in the necessary and proper business of said company, and that all of said bonds were sold, and delivered in payment, and transferred by said company for the purposes and in the manner contemplated as aforesaid by said company, and that large numbers of said bonds were paid and delivered to residents of the State of Wisconsin in payment of the indebtedness of such persons against said company for materials furnished to and services rendered for said company, and that large numbers of said bonds are now held by such persons in the said State, or have been

by them turned into the stock of the Milwaukee and Minnesota Railroad Company, as hereinafter stated, and that a large number of said bonds have passed into circulation in the bond and stock markets of the United States, particularly in the city of New York, which are now held by bona fide purchasers and owners, or have by them been turned into the stock of the Milwaukee and Minnesota Railroad Company, as hereinafter mentioned. That about the 1st of February, A. D. 1859, the said company having made default in payment of or part of the interest due on said bonds secured as aforesaid, the said William Barnes, in pursuance of the provisions of the laws of the State of Wisconsin, then in force in that behalf, and the provisions contained in said mortgages or deeds of trust, proceeded to the foreclosure of said mortgages by advertisement, and, having previously given the notice required by law in that behalf; on the 21st of May, A. D. 1859, said William Barnes, trustee, sold at public auction, at the court-house, in the city and county of Milwaukee, in said State of Wisconsin, all property, rights, privileges, franchises, things in action, and other things in said mortgage and supplementary mortgage to him, said Barnes, described; and the said William Barnes, trustee, then and there at said sale became the purchaser thereof according to the provisions of the laws of said State of Wisconsin, then in force in that behalf, at and for the sum of one million five hundred ninety-three thousand three hundred and thirty-three dollars and thirty-three cents, ($1,593,333 33), no other person or body having made any bid whatever for the same, and that said mortgages thus became and were thereby foreclosed, according to the provisions of the laws of the State of Wisconsin in that behalf then in force. And that said Barnes, by virtue of said purchase and the provision of the law of the State of Wisconsin then in force in that behalf, became the owner of the property and franchises and other things so purchased by him, and thereafter held the same in trust, and only in trust, for the holders of the then outstanding bonds secured by said mortgages. And that afterwards, to wit, on or about the 23d day of May, A. D. 1859, the owners and holders of a large majority of the said bonds proceeded to organize anew, and then and there elected directors, and took the corporate name "Milwaukee and Minnesota Railroad Company," and said Barnes then and thereafter conveyed to said last-named company all the property and things by him purchased as aforesaid, and thereafter said company proceeded and conducted its business under and in pursuance of the charter of said La Crosse and Milwaukee Railroad Company, and thereby became, and ever since have continued, a corporation under and by virtue of the laws of said State, capable of suing and being sued; and that said Milwaukee and Minnesota Railroad Company immediately thereafter entered into the possession of said property and franchises of said La Crosse and Milwaukee Railroad Company, so far as the same were in possession of said La Crosse and Milwaukee Railroad Company at the time of said sale. That said bondholders, at said new organization, elected and chose the following named persons directors of said Milwaukee and Minnesota Railroad Company, viz:

Russell Sage, N. J. Emmons, Hans Crocker, Wm. E. Smith, Lemuel W. Weeks, W. B. Gilbert, William Gould, William R. Sill, and —— Battershall, and that said directors immediately thereafter organized the said board of directors by electing and choosing Russell Sage president, N. J. Emmons vice-president, and Dwight W. Keyes secretary of said Milwaukee and Minnesota Railroad Company; and that neither the La Crosse and Milwaukee Railroad Company, nor any subsequent incumbrancer or incumbrancers, nor any other person or persons did within one year after said sale redeem or offer to redeem the property and things so sold under said mortgages or trust deeds according to law in that behalf. That by virtue of the said foreclosure of said deeds of trust or mortgages to said Barnes as hereinbefore set forth, and the organization of said Milwaukee and Minnesota Railroad Company, and conveyance by said Barnes as hereinbefore set forth, and the said premises not having been redeemed, as hereinbefore stated, the said Milwaukee and Minnesota Railroad Company from and after May 21, 1860, became, under and by the laws of the State of Wisconsin, the successor of the La Crosse and Milwaukee Railroad Company, as to all the property and things described in said deeds, and the owner of and clothed with all the rights, privileges, franchises, and property, real and personal, and things in action, and effects of every nature and description before then belonging to said La Crosse and Milwaukee Railroad Company, wherever situated and however circumstanced, subject only to such valid and legal leins and incumbrances thereon as were prior to said first deed to said Barnes; and that the said Milwaukee and Minnesota Railroad Company, being by law an incorporated company, composed of the creditors of the said La Crosse and Milwaukee Railroad Company, and purchasers at said foreclosure sale, (in the manner hereinbefore stated,) as corporators, has a legal right to object to, resist, and set aside all conveyances, negotiations, sales, transfers, leases, mortgages, or judgments which were or have been made or suffered by said La Crosse and Milwaukee Railroad Company with intent to hinder, delay, or defraud its creditors; and has the right to object to, resist, and set aside every illegal, unjust, or fraudulent claim of any person or persons against the said La Crosse and Milwaukee Railroad Company which is apparently a lein or incumbrance upon any of the property, rights, privileges, franchises, or other things whatsoever of said last-named company, which were embraced or described, or intended to be embraced or described, in either of said trust deeds to said Barnes, and now owned by said Milwaukee and Minnesota Railroad Company, as hereinbefore stated; and has the right to collect and enforce all actions and causes of action existing in favor of said La Crosse and Milwaukee Railroad Company and conveyed by said trust deeds to said Barnes or either of them; that the said Milwaukee and Minnesota Railroad Company has, since its organization as aforesaid, continued a corporation under the laws of the State of Wisconsin, and has been recognized and its incorporation fully ratified by act of the legislature of said State, duly approved by the governor of said State, and still a law of said State, to wit, by chapter 28 of the

private and local laws of said State, enacted in 1862, entitled "An act in relation to a certain corporation election," approved March 6, 1862.

This defendant, further answering, says that it is advised and believes, and thereupon submits to this honorable court, and insists that by law no one of said several judgments mentioned in said bill of complaint ever were a lien or incumbrance on any part of the property mentioned and described in said bill of complaint; but, further answering, this defendant says that the said judgments in favor of said Litchfield, said Bouton, said Justice, Cobb, Bean, Wilson, and Mitchell, and said Greenleaf mentioned in said bill of complaint were each and every of them rendered after the giving of said mortgage to said Barnes, dated June 21, 1851, and that by the laws of the State of Wisconsin in that behalf in force at the time of the said foreclosure of the said mortgage to said Barnes as hereinbefore stated, the said foreclosure extinguished all lien or incumbrance of each and every of said judgments mentioned in said bill of complaint upon any of the property, real or personal, franchises, or other things mentioned in said bill of complaint, even if this honorable court shall be of opinion that said several judgments were liens or incumbrances upon the same or any part thereof at the time when the said judgments were respectively rendered as aforesaid.

This defendant, on information and belief, further answering, says that it is not true, and it expressly denies that said mortgage
39 or trust deed of the 21st of June, 1858, to the said Barnes, and the supplementary mortgage of the 11th of August, 1858, to said Barnes, or either of them, were issued in fraud of the creditors or stockholders of said company or without authority of law; but, on the contrary thereof, this defendant, further answering as aforesaid, says that said mortgages to said Barnes were both issued bona fide and in pursuance of authority of law in that behalf, and that both of said mortgages to said Barnes were honestly issued in and about the necessary business of the said La Crosse and Milwaukee Railroad Company, and that both were necessary and proper to be issued by said last-named company in and about the prosecution of its appropriate and legitimate and legal business. And, further answering as aforesaid, this defendant expressly avers that both of said mortgages were made, executed, and delivered by said last-named company for the purpose of securing its bona fide indebtedness and to raise money for its legal and proper use, as it was by law fully authorized to do; and denies that said mortgages or either of them were issued or made, executed or delivered, for the purpose or with the design of bringing about a speedy sale of said road or its franchises or other thing or things, or for the purpose or with the design of cutting off the stockholders in said company, or to hinder, delay, or defraud the creditors of the said La Crosse and Milwaukee Railroad Company or passing the title and property in or to the said road or its franchises or any part thereof to any of the directors of said company or their friends, or to any other person or persons, body or bodies corporate or politic whatever.

This defendant, further answering on information and belief, says that it is true that on or about the 15th day of June, A. D. 1858, the said Gunnison, said Gurst, said Noxon, Soutter, and Shears,
40 five of the directors of the La Crosse and Milwaukee Railroad Company, at a meeting in Albany, New York, or elsewhere, which was subsequently and soon thereafter ratified by action of the the board of directors in said State of Wisconsin, by resolution directed a modification of the bonds to be issued under said trust deed to said Barnes so as to make the first instalment of interest payable on the 1st day of January, A. D. 1859, instead of the 1st day of July, A. D. 1859; but denies that said modification was made to enable them or any other person or persons to carry out any fraudulent design, or to enable them or any other person or persons to sell or cause to be sold the road and its franchises on said trust deed, but says that said modifications was made only for the purpose and with the intention to thereby make said bonds more available, and thus enable said company the more speedily and readily to raise money by a sale of said bonds.

This defendant, further answering on information and belief, says that said La Crosse and Milwaukee Railroad Company, through its directors or by some of its officers, on or about the month of June, A. D. 1858, made a settlement with Selah Chamberlain of a claim made by him against said company, and gave him therefor the promissory note of said company for twenty thousand dollars, payable in two or three months thereafter, and agreed to deposit with him four hundred thousand dollars of the bonds secured by the said mortgages to said Barnes as collateral security, and did about that time deposit with him as aforesaid said bonds to the amount of two hundred thousand dollars, and paid him five thousand dollars in cash, which was raised by said company by hypothecation or sale of bonds secured by said Barnes mortgages; and that in the month of October or No-
41 vember, 1858, the said company, by some of its officers or agents, delivered to said Chamberlain two hundred thousand dollars more of said bonds as collateral security to said twenty thousand dollar note, as it had agreed to do as aforesaid; but denies that afterwards, on or about the 15th day of January, A. D. 1859, said bonds were divided up between the said committee mentioned in said bill of complaint or their friends or any other person or persons without being sold, as stated in said bill of complaint; but, on the contrary thereof, this defendant, upon information and belief, further answering, says that the said Chamberlain was fully authorized to sell said bonds at the maturity of said twenty thousand dollar note, unless the same should be then paid; and that at the maturity of said note, the said company was greatly embarrassed and unable to raise the money to pay said note, and the said Chamberlain, by Meigs & Greenleaf, his brokers in New York, proceeded to the sale of said bonds, as he was authorized to do; that the officers of said company procured one or two postponements of said sale in the hope of being able to raise said money and pay said note and reclaim said bonds, but the said company was unable so to do, and that thereafter and about the month

of November, 1858, the said Chamberlain, by his said brokers, sold said bonds so pledged with him as aforesaid, as he was authorized to do, in due course of business, to bona fide purchasers; that said bonds were sold at very low rates in consequence of the poor credit of said company and the doubtful sufficiency of the security of said bonds, but that the sale of said bonds by said Chamberlain was open, fair, and honest, and that each and every of said bonds was sold for the best price and largest consideration that could be obtained therefor, and that the statements in said bill of complaint as to the dispositions of said bonds are untrue.

42 This defendant, upon information and belief, denies each and every allegation of the said bill of complaint charging or stating that said bonds secured by said Barnes mortgages or any of them were disposed of fraudulently or with or for any illegal or fraudulent design or purpose; but, on the contrary thereof, upon information and belief, says that each and every of the said bonds secured by the said Barnes mortgages was disposed of by said La Crosse and Milwaukee Railroad Company honestly and bona fide and for the best possible interests of said company; and this defendant denies, upon information and belief, all unlawful combinations charged in the said bill.

This defendant, upon information and belief, admits that at a meeting of the directors or some of them at the city of Albany, New York, on or about the 13th December, 1858, after reciting that they had received information from Milwaukee that a very large amount of the most valuable property of said company in the city of Milwaukee, including its machine-shops, engine-houses, and repair shops, which had cost or was worth to the company one hundred and fifty thousand dollars, was in imminent peril of being lost, as stated in said bill of complaint, and that said company was destitute of the means to save said property from total loss, and that sales of property indispensable to the company had already been made which might be redeemed, that said company had not until a then very recent date been aware of the condition of the said property, and after reciting further as stated in said bill of complaint, did pass the resolution in that behalf as stated in the said bill of complaint; that the said recitals preceding said resolution, as stated in said bill of complaint and ad-

43 mitted in this answer, were all true; that said recitals and resolution were made and passed in good faith and for the best interests of said company as the said directors then believed, (and that said directors then believed all said recitals to be true and that they were true,) and not for any illegal or fraudulent purpose, as stated in said bill of complaint; and that said resolution was subsequently ratified by said company by its board of directors in the State of Wisconsin.

This defendant, further answering, on information and belief, admits that the said La Crosse and Milwaukee Railroad Company, by its president, in or about the month of December, 1858, borrowed of William Gou'd the sum of twenty-five hundred dollars and of William Watson the further sum of twenty-five hundred dollars, and gave its

notes to them respectively therefor, payable in some short time thereafter, and deposited with each of said persons, as collateral to the note of said company, bonds secured by said Barnes mortgages, and in like manner and at or about the same time the said company borrowed of Seth R. Foster the sum of three thousand dollars and of Henry G. Gilbert the sum of seven thousand five hundred dollars, and executed to said Foster and Gilbert respectively its promissory notes for the sums aforesaid respectively, payable in a short time thereafter, and deposited with said Foster and Gilbert respectively, as collateral security to said notes, bonds secured by said Barnes mortgages the aggregate amount of about two hundred and ten thousand dollars; but this defendant, on information and belief, denies that the said notes or either of them were given, or the said securities or any of them were pledged, with any understanding between the said directors or either of them and the said Watson, Gould, Gilbert, or Foster, or any other person or persons, that the said notes or either of them would not be paid at maturity, or that the said securities or any of them would not be redeemed by said company.

44 This defendant, further answering upon information and belief, says, that the said money so borrowed by said company was borrowed by it in good faith for its necessary use, and was by it used and employed about its proper and necessary legal business, and in such manner as the said company and its board of directors deemed for the best interests of said company, and denies as aforesaid that the said directors or any of them ever confederated or combined together or with any other person or persons to defraud, hinder, or delay the creditors of said company, or any other person or persons, by borrowing said money or any part of it, as borrowed by it, or deposited said bonds or any of them as security aforesaid, and denies that the said directors or any of them at the time they borrowed said money as aforesaid, or any of the persons from whom said company borrowed said money as aforesaid, intended that any of the said notes given therefor should not be paid at maturity, or that the said bonds should be sold, and they be enabled thereby to purchase them or any of them at a nominal or other consideration, or know that any of said notes would not be paid at their maturity, or that it was not necessary for said company to borrow said money upon such terms, or that the president of said company never intended to apply but about seven thousand five hundred dollars of said money to the purposes for which the same was borrowed as aforesaid, or that he or any of the said directors appropriated any part of said money to their own private or individual uses or purposes; but this defendant, answering on information and belief, says that all of said money so borrowed by said company was received by it through its officers, and by it applied to its necessary business, or the payment of its just debts, and that said company was enabled to and did by said money so borrowed, save property belonging to said company of value exceeding

45 the nominal amount of said bonds so pledged as collateral security as aforesaid, which would otherwise have been entirely lost to said company.

This defendant, further answering on information and belief, denies that the said Gould, Watson, Gilbert, and Foster, or either of them, were induced or solicited by said directors or either of them to divide said bonds among themselves or any other person or persons without offering said bonds for sale; and denies, as aforesaid, that the said Gould, Watson, Foster, and Gilbert, or either of them, did divide said bonds among themselves or any other persons without a sale; but, on the contrary thereof, the defendant, answering as aforesaid, says that at the maturity of the said several notes given to the said Gould, said Watson, said Foster, and said Gilbert as aforesaid, the said company was unable to raise money necessary to pay either of said notes, and that thereafter the said Gould, the said Watson, said Foster, and said Gilbert respectively proceeded to sell said bonds so held by them respectively as collateral security as aforesaid, and did, as they were respectively fully authorized to do, sell the same openly, fairly, and in due course of business at and for the highest price which could be obtained therefor; and that all of said bonds had, before the foreclosure of the said mortgages to said Barnes, passed into circulation, and been sold and delivered from hand to hand in the stock-markets of the United States, and that the said bona fide holders of the said bonds held the same at the time of the said foreclosure freed from any equitable defences (if any such there were) which might have been available between the original parties thereto.

This defendant, further answering on information and belief, says that all of the said bonds secured by the Barnes mortgages
46 were legally sold or disposed of by said company, and in such manner as the then board of directors of said company then believed to be for the best interests of said company, and that the said bonds were afterwards, and at the time of the foreclosure, (except about five hundred and fifty thousand dollars thereof, which were held by Stoddard Judd in trust for certain farm mortgage bondholders, creditors of said company,) owned by bona fide owners who had received the same in due course of business, that said bonds were all made negotiable, payable to the bearer thereof; that a substantial copy of said bonds is set out in the trust deed, a copy of which is hereto attached and marked Exhibit No. 1, and that said bonds had been freely sold and passed from hand to hand in stock-markets and in business transactions before the foreclosure of the Barnes mortgages; and this defendant is advised, submits to the court, and insists that the said bonds in the hands of such bona fide holders were not at the time of said foreclosure, and are not now, subject to any equitable defences which might have been interposed between the original parties thereto.

This defendant, further answering on information and belief, says that the said company paid out upon its just indebtedness of said bonds secured by said Barnes mortgages as follows, to wit: To W. & M. Sayles, 300 dollars; to R. S. Kneeland and others, for wood and bills payable, 7,102 $\frac{3}{100}$ dollars; to Cyrus Hawley 7,400 dollars; to D. H. Rockwell, Rockwell & Randall 3,000 dollars; to Bissell & Earing 300 dollars; to E. Cramer 5,500 dollars; to H. J. Nazro & Co. 3,000

dollars; to J. S. Rockwell 1,900 dollars; to D. W. Clark 700 dollars; to H. J. Downes 100 dollars; to Alexander Mitchell 6,000 dollars; to J. T. Lewis 1,800 dollars; to Garret Vliet 800 dollars; to D. McDonald 2,000 dollars; to Wm. E. Cramer 500 dollars; to Caswell
47 & Gaylord 2,000 dollars; to C. R. Austin 1,500 dollars; to C. D. Nash 500 dollars; to H. Luddington & Co. 1,300 dollars; to E. D Baker 1,400 dollars; to G. D. Norris 400 dollars; to G. D. Butterfield 1,000 dollars; to S. A. Cole 2,000 dollars; to W. H. Clark 100 dollars; to James Cady 500 dollars; to Barnet and estate of Rodden 200 dollars; to Z. A. Cotton 1,000 dollars; to Wisconsin Roofing Co. 400 dollars; to H. Williams 500 dollars; to W. G. Gardner 300 dollars; to W. G. Sterling 600 dollars; to John Cramer 1,000 dollars; to S. B. Scott 1,500 dollars; to the Wisconsin Leather Co. 500 dollars; to Samuel Brown 700 dollars; to Joseph Cary 1,000 dollars; to A. F. Luelflohn 800 dollars; to B. Crandall 400 dollars; to Jonas Eaton 900 dollars; to L. Comstock 200 dollars; to Cyrus Hawley, for estate of F. M. Hawley, 3,000 dollars; to A. B. Van Cott 1,000 dollars; to John P. McGregor 2,000 dollars; to C. A. Sprague 100 dollars; to N. Gerwold 500 dollars; to N. B. Caswell 600 dollars; to H. M. Griswold 1,500 dollars; to Capt. L. H. Cotton 700 dollars; to E. W. Dennis, for estate Watkins, 1,800 dollars; to R. S. Kneeland for debts due sundry persons 400 dollars; to E. D. Holton 500 dollars; to Edward Porter 600 dollars; to J. H. Tweedy 3,700 dollars; to Sholes & Simmons 200 dollars; to A. S. Prichard 2,000 dollars; to Russell Sage 80,000 dollars.

This defendant, further answering on information and belief, denies that the said foreclosure of the said Barnes mortgages was had in pursuance of any fraudulent scheme, design, or purpose, as stated in said bill of complaint or otherwise, but says, as aforesaid, that the said La Crosse and Milwaukee Railroad Company had become and was unable to raise money to pay the interest which had become due on said bonds secured by said mortgages to said Barnes, and that the said Barnes thereupon proceeded in good faith to foreclose, and did foreclose, the said mortgages, as it was his duty to do.

48 This defendant, further answering, says that the said La Crosse and Milwauke Railroad Company, during all the time within which it sold and disposed of said bonds secured by said Barnes mortgages, had authority by law to sell and dispose of its bonds at such rates and for such prices and at such discount as it thought for its own best interest, and that all of said bonds were sold and disposed of as said company and its directors believed for the best interest of said company.

This defendant further answering, admits that it has not as yet been in actual possession of any part of said railroad or other property described in said bill of complaint, but says said railroad from Milwaukee to Portage City, together with the rolling stock and franchises thereto pertaining, are now held by a receiver of this court in a certain cause in said court pending wherein James T. Soutter, survivor of Greene C. Bronson, is complainant, and the La Crosse & Milwaukee Railroad Company, this defendant and others are defendants;

that there is but four hundred thousand dollars or thereabouts now due the complainants in said cause, and this defendant expects and intends to pay that sum, procure the discharge of the receiver, and enter into possession of said railroad rolling stock and franchises in a very short time, and use and operate the same as its own, as it has the legal right to do.

This defendant further answering on information and belief, says that it is not true, and it denies that the said Barnes trustee mentioned in said bill of complaint was ever advised of any fraudulent issue of any of said bonds, or ever confederated with the directors of the La Crosse and Milwaukee Railroad Company, or any other person or persons, for the sale of said road, or that the bonds for the payment of which the said road was sold as aforesaid, or any
49 of them, were illegally issued and held by the said directors, or any of them or their immediate friends, or any other person or persons on a mere nominal consideration, or that the same or any of them were fraudulent or void, and denies that the said road, rolling stock and franchises were sold at the par value and interest, so as more effectually to prevent the stockholders of said company from redeeming the property from said sale, or to secure said road and franchises to any person or persons, or to defraud, hinder, delay or defeat the said complainants or any other person or persons from collecting any claims against said company, said road or property, but that said road, other property and franchises were bid off by said Barnes at the price aforesaid, because and only because the said Barnes believed it to be his duty, and for the best interests of said bondholders, for him so to bid the same.

This defendant further answering, says that it has no knowledge or information sufficient to form a belief as to whether the directors of the La Crosse & Milwaukee Railroad Company issued to said Barnes any or what amount of said bonds to compensate him as trustee or for services in foreclosing said mortgages, or whether counsel employed to assist in said foreclosure were paid by said directors ou of said bonds belonging to said company.

This defendant admits the appointment of a receiver (on the mo tion of said Bronson and Soutter trustees) of the railroad from Mil waukee to Portage City, together with the rolling stock and franchise pertaining thereto, and that the said receiver ever since or ought t have held and operated the same, and received the tolls, rents an income therefrom; that the income of said premises has been larg
but this defendant is as ignorant as the complainants say the
50 are of what are the net earnings, but believes that the operatin expenses do not equal one-half of the gross income. That tru it is as stated in said bill of complaint that notwithstanding this larg net income the said receiver fails to pay the interest on said mortgage and this defendant believes that said receiver in that cause and t said complainants in this cause are in fraudulent collusion to squand the said net income, and sacrifice said premises by a sale, and th this defendant fully shares with the said complainants a just fear, a therefore admits that if said premises long continue in the hands

said court or its receiver, the accumulations of interest will be great, and the fund nearly, if not quite, squandered: to prevent which this defendant intends to very soon pay, and discharge all that is due on incumbrances prior to the date of the said Barnes mortgages and enter into possession of said premises.

This defendant admits that the said La Crosse and Milwaukee Railroad Company has ceased to exist, as stated in said bill of complaint and this defendant therefore submits that it is not true as stated in said bill of complaint that the said last-named company is a corporation doing business in the said State of Wisconsin.

This defendant further answering says, the said William Barnes is now alive, and a citizen of the State of New York; that this defendant is advised and submits to this court and insists that said William Barnes is a proper and necessary party to said bill of complaint, and that the court cannot make any decree thereon without said Barnes being before said court as a party thereto, and this
51 defendant here and now insists upon said objection to said bill, and prays that the same may be by said court declared defective for the non-joinder of the said William Barnes as a party thereto, and that the same may be dismissed.

This defendant further answering says, that it is advised and submits to this court, and insists that the object of said bill of complaint is to perform in effect the office of an information or writ of quo warranto and transfer to this court the jurisdiction of declaring against the right of this defendant to its corporate existence and franchises; and this defendant prays the same benefit of this objection to said bill of complaint, and the objection of non-joinder of said Barnes, as if this defendant had insisted upon the same in a demurrer to said bill of complaint.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by the said bill charged, without this that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, avoided, or denied, is true to the knowledge or belief of this defendant, all which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

The Milwaukee and Minnesota Railroad Company.

[L. S.] MATT. H. CARPENTER,

Solicitor for said Company, and of Counsel for said Company.

DISTRICT OF WISCONSIN:

Alexander Fleming, being first duly sworn, on oath says that he
is one of the directors of the Milwaukee and Minnesota Rail
52 road Company, which is a corporation existing under the law of the State of Wisconsin; that Moses Kneeland, the last president of said company, departed this life at Milwaukee, in said dis

trict, since the last meeting of the stockholders of said company, and that said company therefore has no president at present; that this affiant is and for many months has been the agent of said company, to manage and attend to its litigation, and particularly its defence to the bill of complaint in this cause; and therefore this affiant verifies the foregoing answer, which is subscribed by the solicitor of said company, and sealed with the corporate seal of said company, on behalf of said company; and this affiant further says, that he has heard read and knows the contents of the foregoing answer, and that the same is true to his own knowledge, except as to the matters and things stated therein on information and belief, and that as to those matters he believes it to be true.

A. FLEMING.

Subscribed and sworn to before me this 15th day of April, A. D. 1864.

A. SCOTT SLOAN, *Clerk*,
By JAS. McFARLIN, *D'p'y*.

53 *Exhibit No.* 1.—*Trust deed.*

This indenture, made the twenty-first day of June, in the year of our Lord eighteen hundred and fifty-eight, between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, party of the first part, and William Barnes, of the city of Albany, and State of New York, trustee as hereinafter mentioned, party of the second part.

Whereas the said railroad company for the purpose of providing for and securing the payment of its floating debt, and for other purposes, has determined to issue its bonds for a sum not exceeding two millions of dollars in the aggregate, embracing one thousand bonds of one thousand dollars each, fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, with interest warrants in the usual form attached, and which bonds will be substantially in the following form, to wit:

UNITED STATES OF AMERICA, *State of Wisconsin:*

No. ——. $——.

Know all men by these presents, that the La Crosse and Milwaukee Railroad Company, for value received, acknowledge itself indebted to the bearer thereof in the sum of ——— dollars, which sum it agrees to pay to the bearer hereof on the first day of July, in the year of our Lord one thousand eight hundred and eighty-eight, at the Albany Exchange Bank, in the city of Albany, with interest at the rate of seven per cent. per annum, payable at the Albany Exchange Bank, in the city of Albany, semi-annually, on the first day of January and the first day of July in each year, on presentation or delivery of the interest warrants or coupons hereto annexed. This is one of a series of bonds, all of the same tenor, making in the aggregate the sum of two millions of dollars, for securing the payment of which a trust deed has been executed by said company to William

Barnes, of the city of Albany, and State of New York, conveying to him (subject to certain charges thereon) the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred miles, part of which road has been constructed and is now in full operation, and the residue is in process of construction, together with the equipments and all other things pertaining, or which may hereafter pertain, to the road so conveyed, reference to which deed is hereby had and made for a more full description of its contents. And for further securing and providing for the payment of said bonds, the said deed of trust provides for the creation of a sinking fund, the first payment of $25,000 to which is to be made by said company to William Barnes, of Albany, the trustee named in said deed of trust, on the first day of July, eighteen hundred and sixty-one, and thereafter a like sum annually, with which sum, as from time to time paid, the said trustee is to purchase outstanding bonds secured by said deed of trust, as is more particularly specified in said deed of trust, to which reference is hereby made.

In witness whereof, said railroad company has hereunto affixed its corporate seal, and caused the same to be signed by the president and secretary, this 21st day of June, in the year of our Lord one thousand eight hundred and fifty-eight.

——— ———, *President.*

——— ———, *Secretary.*

Registered and countersigned this ——— 185 .

——— ———, *Trustee.*

And whereas said railroad company has determined to secure the payment of said bonds, with the interest thereon, in the manner herein provided:

Now, therefore, this indenture witnesseth, that said railroad company, in consideration of the premises and the sum of one dollar paid by said party of the second part, has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm unto said party of the second part all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred (200) miles, a part of which road has been constructed and is now in full operation, and the residue is in process of construction, including all and singular the several tracts, pieces, or parcels of land which now are, or hereafter may be, or constitute the site of the road-ways, turn-outs, engine-houses, work-shops, depots, and other buildings, and all the other lands and real estate which now constitute or may hereafter constitute or be a part of or appertain tosaid railroad. And also all and singular the superstructure of said railroad, whether now made or to be made hereafter, and all the engine-houses, work-shops, depots and other buildings, and all the other improvements on or appertaining to said railroad, whether now built or made, or to be built or made hereafter; and also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description

which have already been or may hereafter be procured for or used on said railroad, and all the materials, tools, implements, and utensils, and other personal property which have been or may hereafter be procured for or used in connexion with said railroad; and also all and singular the rights, liberties, and privileges, and franchises of said railroad company, so far as they relate to said railroad from Milwaukee to La Crosse.

And it is hereby declared to be the intention of the parties to these presents to convey to and vest in said party of the second part all the property, real and personal, of said railroad company to be acquired hereafter, as well as that which has been already acquired, together with all the rights, liberties, privileges, and franchises
54 of said railroad company, in respect to said railroad from Milwaukee to La Crosse, as fully and amply as the same might be conveyed if said railroad had already been fully constructed and equipped, excepting, however, any lands which now do or hereafter may belong to said company under any grant from the United States or the State of Wisconsin; subject, nevertheless, to lines already existing upon the property and franchises above mentioned, as follows: To a first mortgage upon the eastern division of the said road, between Milwaukee and Portage City, to secure outstanding bonds of said company, to the amount of about nine hundred and twenty-two thousand dollars. Also bonds to the city of Milwaukee to the amount of three hundred and fourteen thousand dollars. Also to bonds secured by second mortgages on said eastern division, subject to the amount of one million dollars. Also subject to a mortgage of four million dollars, upon the line of said road from Portage City to La Crosse, and to a second mortgage of about two hundred thousand dollars on the road from Portage City to La Crosse, and from the junction near the village of Tomah to the terminus of the road on the lakes or river St. Croix. To have and to hold all and singular the property, real and personal, with the hereditaments and appurtenances, and all and singular the rights, liberties, and franchises hereby conveyed, or intended to be conveyed, subject to the aforesaid mortgages, to the aforesaid party of the second part and his successor, and his heirs and assigns forever; in trust, nevertheless, and upon the trusts, terms, and conditions herein expressed.

First. Until default shall be made in the payment of said bonds or some of them, or the interest thereon, said railroad company shall be suffered and permitted to hold and enjoy the said railroad, with all the equipments and all other things appertaining to the same, and to use the same, and to take and receive the profits thereof to its own use, in the same manner as though this deed had not been made.

Second. In case default for the space of 15 days shall be made on the payment of any of said interest warrants or coupons as they respectively fall due, or if default for the like period shall be made in the payment at maturity of the principal sum of money mentioned in any of the said bonds, then and in either of said cases it shall be lawful, and said trustee is hereby authorized in his discretion, either in person or by his attorney or attorneys, agent or agents, to enter

into and upon and take possession of all and singular the railroad and all the other property, real and personal, herein before conveyed or intended to be conveyed, and to take and receive the income and profits thereof, and to sell all and singular said railroad and other property, with all the rights, liberties, privileges, and franchises of said railroad company in respect to said railroad, either at public or private sale, and to execute and deliver to the purchaser or purchasers deeds and conveyances which shall vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of said trustee and said railroad company, of, in, or to said property, rights, liberties, privileges, and franchises, and every part and parcel thereof. But before any sale shall be made at auction, notice of such intended sale shall be published once in each week for three weeks at the least, in two newspapers published in the city of New York, and in a newspaper published in the city of Milwaukee, and should any further notice be required by the laws of the State of Wisconsin, the same shall be given. And in case default shall at any time be made in the payment of the interest on the bonds then outstanding, or in case default shall be made in the payment of the principal sum of money mentioned in said bonds, or any of them, at maturity, then and in either of said cases, said trustee, on the written request of the holder or holders of bonds then outstanding, to the amount, in the aggregate, of one hundred thousand dollars, shall proceed to make such sales and conveyances so as above mentioned.

Third. Said railroad company covenants and agrees to and with said trustee, and his successor, that said company will, from time to time, during the continuance of the trust, make, execute, and cause to be duly recorded, and deliver to said trustee all such further conveyances and assurances, and will do all such further acts and things as may be either necessary or proper for more effectually vesting in said trustee all such right, title, interest or estate, both legal and equitable, as said railroad company now has, or may hereafter acquire, of, in, or to all and every part of the property hereby conveyed, or intended to be conveyed, together with the rights, liberties, privileges, and franchises aforesaid.

Fourth. Said railroad company will cause this indenture to be duly recorded in all proper places, and will do whatever else may be necessary or proper to give full effect to the conveyance, and will pay and discharge all taxes, charges, liens and other burdens which either exist or may hereafter arise or be imposed upon the property hereby conveyed, or intended to be conveyed, and the trustee assumes no duty or responsibility on these subjects, or any of them, nor in relation to any other matter or thing, except as herein provided.

Fifth. This trust extends only to such bonds as shall be registered and countersigned by the trustee, and when all of said bonds shall be satisfied and discharged, the trust shall cease. The trust shall also cease at the end of six calendar months after the principal moneys shall fall due, as to all such bonds as shall not then

have been presented for payment. And whenever the trust shall determine, and any moneys which may be due to the trustee shall be paid, the trustee will re-convey to said railroad company all this right, title, and interest of, in, and to the trust property.

Sixth. Said railroad company will, from time to time, pay all costs, charges, expenses, and compensation of the trustee, in, about or for the execution of the trust, and will in all things keep him fully indemnified and saved harmless of, from, and against all damages, costs, charges, and expenses which he may sustain or be part to in consequence of accepting this trust, or of anything which may be done or omitted under it, saving only such damages as may arise from the culpable act or neglect of the trustee.

Seventh. And the said railroad company agree to establish and provide a sinking fund for the gradual redemption and payment of said bonds, and for that purpose will pay to the said trustee, on the first day of July, eighteen hundred and sixty-one, and annually thereafter until this trust is closed, the sum of twenty-five thousand dollars, with such sum, as from time to time the same shall be paid, the said trustee shall from time to time purchase outstanding bonds, secured by this deed of trust, at the lowest price he can pur-
55 chase the same for, first giving ten days' public notice in one or more newspapers published in New York, Albany, and Milwaukee, respectively, of his desire to purchase so many of said bonds as can be obtained for the money of said sinking fund then in his hands, and all bonds so purchased, belonging to said sinking fund, shall be retained by said trustee until this trust be closed.

Eighth. The trustee is hereby authorized to appoint all such attorneys, counsellors, clerks, and other agents as he may deem proper in the execution of the trust, and shall not be answerable for the defaults or other misconduct of such attorneys, counsellors, or other agents, unless chargeable with culpable negligence in their selection, nor shall the trustee be responsible for anything short of gross negligence or wilful default in the discharge of any of his duties.

Ninth. All moneys which may be received by the trustee under trust, after deducting therefrom all costs, counsel fees, charges and other expenses of the trustee, and his compensation for executing the trust, shall be applied to the payment of the bonds which may be issued under the trust, and the surplus, if any, shall be paid to said railroad company.

Tenth. The supreme court of the State of New York may remove the trustee on the application of the railroad company, reasonable notice being first given to said trustee. The trustee may resign his trust, and be thenceforward discharged from all further duty or obligation in relation thereto: *Provided*, Such resignation, after reasonable notice to the president or secretary of said railroad company, shall be approved by said supreme court. And on the death, removal, or resignation of a trustee, said supreme court may appoint a new trustee, who shall, thereupon, acquire and have all the right, title, interest, and authority under the trust, and be subject to all duties and

responsibilities under the same, as fully as though he had been the original trustee, and had executed this deed.

Eleventh. Said trustee hereby accepts and covenants and agrees to and with said railroad company, faithfully to execute said trust.

In witness whereof, said railroad company has affixed its corporate seal, and caused the same to be subscribed by its president and secretary, and the trustee has subscribed his name and affixed his seal the day and year first above written.

La Crosse and Milwaukee Railroad Company, by—

[SEAL.] N. P. STANTON, *President.*

LOCKWOOD L. DOTY,

Secretary of the La Crosse and Milwaukee Railroad Company.

WILLIAM BARNES, *Trustee.* [SEAL.]

Signed, sealed, executed, and delivered in our presence as to the La Crosse and Milwaukee Railroad company, by N. P. Stanton, president, and as to William Barnes, the said trustee—

CLARK, B.

J. C. CARY.

Signed, executed and delivered in our presence as to Lockwood L. Doty, secretary of said La Crosse and Milwaukee Railroad Company—

EDWARD P. WHALING.

P. M. JOHNSON.

STATE OF NEW YORK, *County of Albany:*

Be it remembered, that on this second day of July, in the year one thousand eight hundred and fifty-eight, before me the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin to take the acknowledgment and proof of the execution of deeds and other conveyances or leases, and of any contract, letter of attorney, or other writing under seal or not, administer oaths, and take and certify depositions to be used or recorded in the State of Wisconsin, appeared Nehemiah P. Stanton, described in and who executed the above instrument in writing as the president of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the said instrument as president as aforesaid, freely for the purposes therein stated, and I certify that the said person who made the said acknowledgment is personally known to me to be the individual described in and who executed the said instrument. And the said Nehemiah P. Stanton, being by me duly sworn, says that he is president of the La Crosse and Milwaukee Railroad Company, the above-named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof, I have hereunto set my had and seal official, at my office No. seventy-one State street, in the city of Albany, the day and year first above written.

Given under my hand and official seal the day and year above written.

[SEAL.] EDWARD WADE,
Commissioner of the State of Wisconsin in and for the State of New York.

STATE OF NEW YORK, *County of Albany, ss:*

Be it remembered, that on the second day of July, in the year one thousand eight hundred and fifty-eight, before me the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin to take the acknowledgment and proof of the execution of deeds or other conveyances or leases, and of any contract, letter of attorney, or other writing under seal or not, administer oaths, and take and certify depositions, to be used or recorded in the said State of Wisconsin, appeared William Barnes, described in and who executed the above instrument of writing between him as one of the parties thereto, and the La Crosse and Milwaukee Railroad
56 Company the other party thereto, and the said William Barnes acknowledged that he executed the said instrument freely for the purposes therein stated, and I certify that the person who made the said acknowledgment is personally known to me to be the individual described in and who executed the said instrument.

In testimony whereof, I have hereunto set my hand and seal official, at my office No. seventy-one State street, in the city of Albany, the day and year first above written.

Given under my hand and official seal, the day and year above written.

[SEAL.] EDWARD WADE,
Commissioner of the State of Wisconsin in and for the State of New York.

STATE OF WISCONSIN, *County of Milwaukee, ss:*

Be it remembered, that on this seventh day of July, eighteen hundred and fifty-eight, before me personally appeared Lockwood L. Doty, to me well and personally known to be the person described in and who executed the above instrument in writing, as secretary of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the same freely and as the free act and deed of the said La Crosse and Milwaukee Railroad Company, for the uses and purposes therein mentioned, and the said Lockwood L. Doty being by me duly sworn, says that he is the secretary of the La Crosse and Milwaukee Railroad Company, the above-named corporaton, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal.

[SEAL.] E. MARINER,
Notary Public, Milwaukee County, Wisconsin.

Recorded July 8th, 1858, at 8 o'clock a. m.

57 *Exhibit No. 2.*

Indenture, made the eleventh day of August, one thousand eight hundred and fifty-eight, between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, party of the first part, and William Barnes, of the city of Albany, and State of New York, trustee as hereafter mentioned, and under and by virtue of an indenture made by and between said corporation and said Barnes, on the twenty-first day of June, one thousand eight hundred and fifty-eight, party of the second part.

Whereas the Congress of the United States, by an act approved June 3d, 1856, entitled, "An act granting public lands to the State of Wisconsin, to aid in the construction of railroads in said State," did enact as follows:

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That there be and is hereby granted to the State of Wisconsin, for the purpose of aiding in the construction of a railroad from Madison or Columbus, by the way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to Bayfield; and also from Fond du Lac, on Lake Winnebago, northerly to the State line, every alternate section of land, designated by odd numbers, for six sections in width on each side of said roads respectively. But in case it shall appear that the United States have, when the line or routes of said roads are definitely fixed, sold any sections or parts thereof granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents, to be appointed by the governor of said State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tier of sections above specified, as much land in alternate sections or parts of sections as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the right of pre-emption has attached as aforesaid, which land thus selected in lieu of those sold and which pre-emption has attached as aforesaid, together with the sections and parts of sections, designated by odd numbers as aforesaid and appropriated as aforesaid, shall be held by the State of Wisconsin for the use and purpose aforesaid: *Provided*, That the lands to be so located shall in no case be farther than fifteen miles from the line of the roads in each case, and selected for and on account of said roads: *Provided further*, That the lands hereby g anted shall be exclusively applied in the construction of the road for which it was granted and selected, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever: *And provided further*, That any and all lands reserved to the United States by any act of Congress, for the purpose of aiding in any object of internal improvement, or in any manner for any purpose whatever, be and the same are hereby reserved to the United States from the operation of this act, except so far as it

may be found necessary to locate the route of said railroad through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the President of the United States.

SEC. 2. And be it further enacted, That the sections and parts of sections of land which by such grant shall remain to the United States, within six miles on each side of said roads, shall not be sold for less than double the minimum price of the public lands, when sold. nor shall any of the said lands become subject to private entry, until the same have been first offered at public sale at the increased price.

SEC. 3. And be it further enacted, That the said lands hereby granted to said State shall be subject to the disposal of the legislature thereof, for the purposes aforesaid, and no other, and the said railroads shall be and remain public highways, for the use of the government of the United States, free from toll or other charge upon the transportation of property or troops of the United States.

SEC. 4. And be it further enacted, That the lands hereby granted to said State shall be disposed of by said State only in the manner following, that is to say, that a quantity of land not exceeding one hundred and twenty sections, and included within a continuous length of twenty miles of road respectively, may be sold, and when the governor of said State shall certify to the Secretary of the Interior that any twenty continuous miles of either of said roads are completed, then another like quantity of land hereby granted may be sold, and so from time to time until said roads are completed ; and if said roads are not completed within ten years, no further sales shall be made, and the land unsold shall revert to the United States.

SEC. 5. And be it further enacted, That the United States mail shall be transported over said road, under the direction of the Post Office Department, at such price as Congress may by law direct : *Provided*, That until such price is fixed by law, the Postmaster General shall have the power to determine the same. Approved June 3d, 1856.

And whereas the legislature of the State of Wisconsin subsequently passed an act, approved October 11th, 1856, which is in the following words :

"An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust created by an act of Congress entitled 'An act granting public lands to the State of Wisconsin, to aid in the construction of railroads in said State,' approved June 3d, 1856,"

The people of the State of Wisconsin, represented in senate and assembly, do enact as follows :

SECTION 1. The La Crosse and Milwaukee Railroad Company is hereby authorized and empowered to survey, locate, construct, complete and perpetually to have, use, maintain and operate railroads, with one or more tracks or lines from the city of Madison, in the county of Dane, and from the village of Columbus, in the county of

Columbia, on the most direct and feasible route, by the way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to Bayfield, and shall have, possess, exercise and enjoy
58 the same rights, privileges, functions, franchises, authority and immunities with reference to the said routes, or any railroad to be built thereon, as it now possesses and enjoys with reference to any route it is now authorized to occupy, or any railroad built, or to be built, thereon; and there is hereby conferred upon the La Crosse and Milwaukee Railroad Company all the power and authority contained in the charter of said company, and in the acts amendatory thereof, for the purpose of carrying out the objects of this act, and of appropriating and applying the lands hereinafter in this act granted, or their proceeds, to aid in the construction of railroads by this act authorized to be built.

SEC. 2. The said roads shall be constructed on the most direct and feasible routes from Madison to Portage City, and from Columbus to Portage City, and simultaneously, as nearly as practicable, and both of them shall be completed by the last day of December, A. D. 1858. And for the purpose of estimating and selecting lands granted by Congress, the city of Madison is hereby designated as the point of commencement of said road, and the whole of the railroad hereby authorized to be constructed shall be constructed by said La Crosse and Milwaukee Railroad Company within ten years from the 3d day of June, 1856.

SEC. 3. The said La Crosse and Milwaukee Railroad Company shall never set up the defence of usury to any contract in any court whatsoever; it may purchase and own rails. chairs, spikes, engines, tenders, cars, and all other things necessary and useful for the construction or operation of a railroad, and sell the same, and shall also have power and authority to operate its said roads, or either of them, in connexion with any and all other railroads which may cross, come up to or connect with the said railroads, or either of them, upon such terms as shall be mutually agreed upon by and between the said companies: *Provided, however*, That the said La Crosse and Milwaukee Railroad Company, in making any such contract as last aforesaid, shall give no preference to one company over any other such company or companies as last above mentioned, but all such companies shall be put upon the same equal terms. *And provided also*, That if the said La Crosse and Milwaukee Railroad Company, and such other railroad company as may desire a running connexion with the same, shall at any time not be able to agree upon the terms of such connexions, then, and in that case, either party may apply to the circuit court of the circuit in which such connexion may be sought, and the said circuit court shall appoint three commissioners, whose duty it shall be forthwith to proceed to examine and adjust the terms on which the said connexion shall exist, and the said award of terms of connexion shall be filed in the office of the secretary of state, and shall be binding on both parties for the term of two years. Such application

shall be on not less than ten days' notice in writing, to be given by the party making such application to the adverse party.

SEC. 4. For the purpose of aiding in the construction of the railroads which by this act the said La Crosse and Milwaukee Railroad Company is authorized to construct, all the interest and estate, present or prospective, of this State, in or to any and all the lands granted by the government of the United States to the State of Wisconsin, for the purpose of aiding in the construction of a railroad from Madison or Columbus by way of Portage City to the St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to Bayfield, by virtue of an act of Congress entitled "An act granting a portion of the public lands in the State of Wisconsin to aid in the construction of railroads," approved June 3d, 1856, together with all and singular the rights, privileges, and immunities conferred, or intended to be conferred, by the said act of Congress, are hereby granted to the said La Crosse and Milwaukee Railroad Company: *Provided*, That the said land shall be exclusively applied in the construction of that road for which it was granted and selected, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatever: *And provided further*, That the title to said lands shall vest in the said La Crosse and Milwaukee Railroad Company in the manner following, that is to say, whenever twenty continuous miles of said road shall have been completed so as to admit of running regular trains on the same, the governor of this State shall certify to the Secretary of the Interior the fact that such twenty continuous miles of such roads are completed as aforesaid, then the title to two hundred and forty sections of said lands shall vest in the La Crosse and Milwaukee Railroad Company; and when a second continuous twenty miles of said road shall have been completed so as to admit of running regular trains of cars on the same the governor shall certify as before, and thereupon a further quantity of one hundred and twenty sections of said land shall vest in said company, and so from time to time until said roads are completed, and it shall be the duty of the governor so to certify to the Secretary of the Interior whenever such twenty miles are completed so as to admit running regular trains of cars on the same; and the governor of the State shall, in his official capacity, and on behalf of the State, and under the great seal thereof, execute and deliver to the La Crosse and Milwaukee Railroad Company, whenever it shall, by virtue of the provisions of this charter, be entitled to any of said lands, a deed in fee simple of any and all the lands to which said company shall be entitled: *Provided*, That said company shall not sell any of said lands until twenty miles of said road shall be completed so as to admit of running regular trains over the same, and so on, from time to time, so that the sales of lands by said company shall never exceed six sections of land for every mile of road so completed.

SEC. 5. The location and designation of the route and line of the said roads shall be made by the said La Crosse and Milwaukee Railroad Company, and the same shall, from time to time, and as fast as

practicable, be reported to the governor of the State. The selection of lands provided for in the act of Congress, hereinbefore mentioned, shall be made by such agents as may be appointed by the governor of the State. Such selection, as well as the survey, location, and completion of said roads, and the compensation of such agents, shall be at the cost and charge of said company, without charge of any kind upon the treasury of the State of Wisconsin. Said railroads, which shall be constructed by the application of funds derived from the lands herein granted, shall be and remain public highways for the use of the government of the United States, free from any toll or other charge upon the transportation of property or troops of the United States, and the United States mail shall be transported over said roads under the direction of the Post Office Department as provided in said act of Congress.

SEC. 6. In consideration of the grants, privileges and franchises herein conferred upon the said La Crosse and Milwaukee Railroad Company for the purposes aforesaid, the said company shall, on or before the first day of March in each year, pay into the treasury of the State such sum as it is by the existing laws of the State required to pay in place of taxes upon its road now constructed, or which it may hereafter construct under the present charter, and in addition thereto it shall pay into the treasury of the State, on or before the first day of March in each year, four per centum on the gross earnings of said road to be built by said company in pursuance of the power and authority conferred by this act, for the year ending on the last day of the preceding December, in place of taxes on that portion of its said railroad so to be constructed; and for the purpose of ascertaining the gross earnings aforesaid, an accurate account of such earnings shall be kept by said company, an abstract whereof shall be furnished by said company to the treasurer of this State, on or before the first day of February in each year, the truth of which abstract shall be verified by the affidavits of the treasurer and secretary of said company; and for the purpose of ascertaining the truth of such affidavits and the correctness of such abstracts, full power is vested in the governor of this State, or any other person appointed, as may be by law prescribed, to examine the books and papers of said company, and to examine under oath the officers, agents, and employés of the said company and other persons, and if any person so examined by the governor, or other authorized person, shall knowingly or wilfully swear falsely concerning the matter aforesaid, every such person is hereby declared to have committed perjury; and for securing to the State the payment of the aforesaid per centum, it is hereby declared that the State shall have a lien upon the railroad of the said company, and upon all other property, estate, and effects of said company, whether real, personal, or mixed, and the lien hereby secured by the State shall take and have precedence of all demands, decrees, and judgments against the said company. The first payment shall be made on the first day of March next after fifty miles of said road shall be completed, and such payment shall be in lieu and in full of all claims of the State for the grant hereby made, and in consider

tion of such annual payment the said company shall be forever exempt from all assessments and taxes whatever by the State, or by any county, town, city, village, or other municipal authority in the State, (except special taxes for the improvement of streets and sidewalks,) upon all stock in the said La Crosse and Milwaukee Railroad Company, whether belonging to said company or to individuals, or any of its franchises or estate, real, personal, or mixed, held by said company, and necessary for the operation of said railroad, and said lands granted by said act of Congress, and hereby authorized to be conveyed to the La Crosse and Milwaukee Railroad Company, shall be exempt from taxation under and by virtue of the laws of this State for the period of ten years after the passage of this act, unless sooner sold, conveyed, or leased by the said La Crosse and Milwaukee Railroad Company, and the State shall have a prior lien upon the road of said company, and all the appurtenances and stock thereof, for all dues that may accrue to the State from said corporation as herein provided, which lien of the State shall take precedence of all demands, judgments or decrees against said corporation.

SEC. 7. Within five years after the title of such lands shall become vested in the said railroad company, the same, if any shall remain unsold, shall be offered for sale in limited qualities at fair prices, preference being given to actual settlers.

SEC. 8. The said La Crosse and Milwaukee Railroad Company shall have full power and authority to transport persons and property in boats, vessels, barges, or other water craft, on any navigable water which any portion of their railroad may run to or connect with, and to receive and collect reasonable compensation for the same, and for that purpose may purchase or build and own such vessels, boats, barges, and other water craft as it may require.

SEC. 9. The said La Crosse and Milwaukee Railroad Company shall be capable in law of taking and holding any lands granted by the government of the United States, or of this State, to aid in the construction of railroads which shall be conveyed to said company by this act, or by deed, or by operation of law; and may also mortgage or pledge, or otherwise dispose of all their right, title, claim, or demand of, in or to any lands, or interest in lands, granted to said company by this act, and in any other estate, real, personal, or mixed, of which they may be seized at the time of execution of such mortgage, or which they may acquire subsequent thereto, in such manner and on such terms as the directors may think proper.

SEC. 10. In case the La Crosse and Milwaukee Railroad Company shall construct the railroad which by this act it is authorized to construct, or any part of it, upon or over any route, upon or over which any other railroad company is authorized to construct a railroad, and upon or over which it has previous to the passage of this act actually surveyed or located its line of railroad, it shall be the duty of the La Crosse and Milwaukee Railroad Company to settle with such railroad company upon principles of justice and equity, for all its property and rights of property which the said La Crosse and Milwaukee Railroad Company shall take, injure or destroy, and the latter company

shall pay to any such company whose property or rights of property shall be thus taken, injured or destroyed, whatever the same is reasonably worth, such payment to be made in money, bonds, stock or lands, or in such other manner as said companies shall mutually agree; and if the said companies cannot mutually agree upon the amount of compensation to be made by the said La Crosse and Milwaukee Railroad Company to such other company for the property and rights of property which said La Crosse and Milwaukee Railroad Company shall so as aforesaid take, injure and destroy, then and in that case each of said companies shall select a disinterested engineer, and the two engineers so selected shall choose a third person, and in case they cannot agree upon such third person, the governor shall appoint such third person, and the three persons so selected shall constitute a board of commissioners whose duty it shall be to ascertain, determine, and award the amount of compensation which the said La Crosse and Milwaukee Railroad Company ought, in justice and equity, to make to such other railroad company for the property and rights of property which shall be so as aforesaid taken, injured or destroyed.

SEC. 11. This act, and all grants herein contained, shall cease and be void, unless the said La Crosse and Milwaukee Railroad Company shall accept of the same within five days after the passage of this act; and such acceptance shall be by a resolution adopted by the directors of said company, a copy of which, duly certified by the secretary of said company, under its corporate seal, within said period of five days from the passage of this act, shall be deposited in the office of the secretary of state. And in case the said La Crosse and Milwaukee Railroad Company shall violate the provisions of this act, the legislature may repeal this act, and may revoke all and singular the rights and franchises herein conferred, so far as the same has not been performed and fulfilled, and so far as the rights and privileges hereby granted have not become complete and absolute.

SEC. 12. All the property which the said La Crosse and Milwaukee Railroad Company is authorized to appropriate, take, possess, hold, use or enjoy, by making payment thereof, as is in this act provided, is hereby declared to be taken for public use, so soon as the said company shall so appropriate, take, possess, hold or use the same.

SEC. 13. The capital stock of the La Crosse and Milwaukee Railroad Company is hereby increased two million dollars over and above its present capital, and within three months after the passage of this act, said company shall open books for subscription to such increased capital stock, after giving at least thirty days' notice thereof in two newspapers, one published in the city of Milwaukee, and one published in the city of Madison. Such books shall be opened in the city of Milwaukee, and shall be kept open for not less than three days, and all persons shall be permitted to subscribe to said stock on the payment to the treasurer of the company of five per cent. of the amount subscribed in cash; but no one person shall be allowed to subscribe for more than two hundred and fifty shares of such stock; and in case the number of shares subscribed shall exceed the amount of two million of

dollars, the same shall be reduced to that amount, by deducting such sums as may be necessary pro rata from each of the several subscriptions, and all of the shares of stock so subscribed shall be subject to calls for instalments thereon in like manner as the other stock of said railroad company.

SEC. 14. It is hereby declared, that in the judgment of the legislature of this State, the objects of the corporation named in this act cannot be attained under or by general laws.

SEC. 15. The La Crosse and Milwaukee Railroad Company shall fence its road in parcels, as it shall from time to time operate the same, within one year after it shall commence the operating of any and every such parcel, until the whole of such railroad shall be in a good, proper and substantial manner fenced throughout the entire extent thereof.

SEC. 16. This act is hereby declared to be a public act, and the same shall immediately after the passage thereof be printed by the State printer, and when thus published shall take effect and be in force.

And whereas the said railroad company, after the passing of the last mentioned act, and on the same day duly accepted the same by a resolution adopted by the directors of said company, a copy of which, certified by the secretary of said company under its corporate seal, was on the same day deposited in the office of the Secretary of State:

And whereas the said railroad company, for the purpose of providing for and securing the payment of its floating debt and for other purposes, had determined before the date of the indenture hereinafter mentioned, dated June 21st, 1858, between said company of the first part, and said Barnes as trustee of the second part, to issue its bonds for a sum not exceeding two millions of dollars in the aggregate embracing one thousand bonds of one thousand dollars each, fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, with interest warrants or coupons in the usual form attached:

And whereas also the La Crosse and Milwaukee Railroad Company executed and delivered to said party of the second part an indenture, dated on the 21st day of June, A. D. 1858, recorded in the office of the secretary of state of the State of Wisconsin, on the 8th day of July, A. D. 1858, in book of railroad mortgages, on pages 342, 343, 344, 345, 346, 347, 348, by which the said railroad company conveyed to said William Barnes, party of the second part, as trustee for the holders of said bonds as therein particularly specified, all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred (200) miles, including all and singular the several tracts, pieces or parcels of land which constituted or might thereafter constitute the site of the road-ways, turn-outs, engine-houses, work-shops, depots, and other buildings, and all other lands which might thereafter constitute or be a part of or appertain to said railroad, and also other property, real and personal, and other rights, privileges, liber-

ties, and franchises, as by reference thereto will more fully and at large appear:

And whereas also the said indenture contained a covenant and agreement on the part of the said La Crosse and Milwaukee Railroad Company to make, execute and deliver to said William Barnes, as trustee as aforesaid, all necessary and proper further conveyances and assurances:

And whereas the said trustee has required the execution and delivery of this further conveyance:

Now, therefore, this indenture witnesseth, that the said La Crosse and Milwaukee Railroad Company, in consideration of the premises, and of the mutual promises herein contained, and the sum of one dollar, paid by the said party of the second part to said party of the first part, the receipt of which is hereby confessed and acknowledged, has granted, bargained, sold, conveyed and confirmed, and does by these presents grant, bargain, sell, convey and confirm unto said party of the second part, all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about
61 two hundred (200) miles, and also the railroad of said company, commencing in the village of Madison, and running from thence by way of Portage City to the St. Croix river or lake, a distance of about two hundred and sixty-eight (268) miles, and also the railroad of said company, commencing in the village of Columbus, and running from thence to Portage City, a distance of about forty (40) miles, a part of which roads have been constructed and are now in full operation, and the residue are in process of construction; and all other railroads built or to be built and constructed by said company, or which they have a right to construct by or under any corporate or other rights, privileges, or franchises heretofore granted or given, or which may be hereafter granted or given to said La Crosse and Milwaukee R. R. Co. by the legislature of the State of Wisconsin, or from any other source, or in any other manner whatsoever, including all and singular the several tracts, pieces or parcels of land which now are or hereafter may be or constitute the site of the road-ways, turn-outs, engine-houses, work-shops, depots, and other buildings, and all other lands and real estate which now constitute or may hereafter constitute or be a part of or appertain to said railroads, and including also all and singular the lots, lands and real estate whatsoever, which the said railroad company now own, or which they shall hereafter acquire by purchase, grant, gift, or otherwise, in the cities of Milwaukee and La Crosse, or in the vicinity of either of said cities, and all improvements made or to be made thereon, and all rights of dockage and wharfage, and all other riparian rights, privileges, and franchises appertaining thereto, for a particular description of which lands already acquired, reference is made to the various deeds of the same to the said company. And also all and singular the superstructure of said railroads, whether now made or to be made hereafter, and all the engine-houses, work-shops, depots, and other buildings, and all the other improvements on or appertaining to said railroads, whether now built or made or to be built or made hereafter. And also all and singular the loco-

motive engines, and other rolling stock, and all the other equipments of every kind and description, which have already been or may hereafter be procured for or used on said railroads, and all the materials, tools, implements, and utensils, and other personal property, which have been or may hereafter be procured for or used in connexion with said railroads. And also all and singular the rights, privileges, liberties, and franchises of said La Crosse and Milwaukee Railroad Company, of every kind and description. And also the said La Crosse and Milwaukee Railroad Company has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm unto said party of the second part all and singular the lands granted or intended to be granted to said railroad company under or by virtue of the act of Congress and the act of the legislature of the State of Wisconsin, hereinbefore mentioned, together with all and singular the hereditaments and appurtenances belonging or in anywise appertaining to the lands and real estate hereby conveyed or intended to be conveyed. And also all and singular the stock, railroad or other bonds, bills of exchange, promissory notes, accounts, causes of action, demands and choses in action of whatsoever nature, which may be owned, or in which the said railroad company may have an interest on such day as the said railroad company may first make default in the payment of the interest or principal, or any part thereof, which may hereafter become due on any of the said bonds issued or to be issued by said company.

And it is hereby declared to be the intention of the parties to these presents to convey to and vest in said party of the second part all the property, real and personal and mixed, of said railroad company, to be acquired or vested hereafter, as well as that which has been already acquired or vested, together with all the rights, liberties, privileges, and franchises of said railroad company, as fully and amply as the same might be conveyed if said railroads had already been fully built, constructed, and equipped, and the particular lands granted by the foregoing acts of Congress and the said legislature had already been fully designated, and duly conveyed and duly patented to said railroad company according to the provisions of said acts.

And the said La Crosse and Milwaukee Railroad Company, party of the first part, does hereby covenant, grant, bargain, promise and agree to and with the said party of the second part, and his successors, grantees, and assigns, to warrant and forever defend the above described and granted premises, lands, tenements, and every part and parcel thereof, and also all the property, real, personal, and mixed, now vested or acquired, or hereafter to be vested or acquired, and also all the rights, property, real, personal and mixed, choses in action, privileges and franchises above conveyed or intended to be conveyed, unto the said party of the second part, his successors, grantees, or assigns, against the said party of the first part, and against all and every other person or persons, States or corporations lawfully claiming or to claim the same or any part thereof, subject nevertheless to all legal lines already existing upon the property and franchises above mentioned.

To have and to hold all and singular the said property, real, personal, and mixed, and choses in action, with the hereditaments and appurtenances, and all and singular the rights, liberties, privileges, and franchises hereby conveyed or intended to be conveyed, subject to the aforesaid existing legal liens, to the aforesaid party of the second part, and his successors and his heirs and assigns forever.

In trust, nevertheless, and upon the trusts, terms and conditions herein expressed, and also expressed in the said indenture, made and executed by and between said parties on the 21st day of June, A. D. 1858.

First. Until default shall be made in the payment of said bonds, or some of them, or in the payment of the interest thereon, or some part thereof, and the said railroad company shall be suffered and permitted to hold and enjoy said railroads, with all the equipments and all other things appertaining to the same, and to use the same, and to take and receive the profits thereof to its own use, in the same manner as though this deed had not been made.

Second. In case of default for the space of fifteen days shall be made in the payment of any of said interest warrants or coupons as they respectively fall due, or if default for the like period
62 shall be made in the payment at maturity of the principal sum of money mentioned in any of the said bonds, then and in either of said cases it shall be lawful, and said trustee is hereby authorized in his discretion, either in person or by his attorney or attorneys, agent or agents, to enter into and upon and take possession of all and singular the railroads, and all the other property, real, personal, and mixed, and choses in action hereinbefore conveyed, or intended to be conveyed, and to take and receive the income and profits thereof, and to take possession of all books, documents, maps and papers relating thereto, and to sell all and singular said railroads, and said other property, real, personal, and mixed, and choses in action, with all the rights, liberties, privileges, and franchises of said railroad company, either at public or private sale, and to execute and deliver to the purchaser or purchasers, deeds and conveyances which shall vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of said trustee and said railroad company, of, in and to the said property, rights, liberties, privileges and franchises, and every part and parcel thereof. But before any sale shall be made at auction, notice of such intended sale shall be published once in each week for three weeks at the least, in two newspapers published in the city of New York, and in a newspaper published in the city of Milwaukee, and should any further notice be required by the laws of the State of Wisconsin, the same shall be given. And in case default shall at any time be made in the payment of the interest money of the bonds then outstanding, or in case default be made in the payment of the principal sum of money mentioned in said bonds, or any of them, at maturity, then and in either of said cases said trustee, on the written request of the holder or holders of bonds then outstanding, to the amount in the aggregate of one hundred thousand dollars, shall proceed to make such sales and conveyances so as above mentioned.

Third. Said railroad company covenants and agrees to and with said trustee, and his successor, that said company will from time to time, during the continuance of the trust, make, execute, cause to be duly recorded, and deliver to said trustee all such further conveyances and assurances, and will do all such further acts and things as may either be necessary or proper for more effectually vesting in said trustee all such right, title, interest or estate, both legal and equitable, as said railroad company now has or may hereafter acquire of, in or to all and every part of the property hereby conveyed or intended to be conveyed, together with the rights, liberties, privileges and franchises aforesaid-

Fourth. Said railraid company will cause this indenture to be duly recorded in all proper places, and will do whatever else may be necessary or proper to give full effect to this conveyance, and will pay and discharge all taxes, charges, liens and other burdens which either exist or may hereafter arise or be imposed upon the property hereby conveyed or intended to be conveyed, and the trustee assumes no duty or responsibility on these subjects or any of them, nor in relation to any other matter or thing, except as herein provided.

Fifth. The trustee is hereby authorized to appoint all such attorneys, counsellors, clerks and other agents in addition to those provided for in said original indenture, executed by and between said parties on the 21st day of June, 1858, and recorded as above mentioned, as he may deem proper in the execution of the trust, and shall not be answerable for the defaults or other misconduct of said attorneys, counsellors, clerks or other agents, unless chargeable with culpable negligence in their appointment, nor shall the trustee be responsible for anything short of gross negligence or wilful default in the discharge or omission to discharge of any of his duties.

And it is hereby expressly declared, covenanted and agreed by the said railroad company, that the provision herein contained for the security of said bonds are in addition to the provisions, liens and securities made or created in that behalf in the said original deed of trust or mortgage, executed by and between said parties, bearing date June 21, 1858, and recorded as aforesaid, and that all such original provisions, liens and securities are to remain in full force and effect; and also that all provisions in said original deed of trust or mortgage for the benefit or protection of said trustee are to remain in full force and effect, and are to be applicable to all trusts and actions or omissions to act under this indenture, in the same manner as if all the provision thereof had been inserted and incorporated in said original trust deed or mortgage.

Said trustee hereby accepts and covenants and agrees to and with said railroad company faithfully to execute said trust.

In witness whereof, said railroad company has hereto affixed its corporate seal, and caused the same to be subscribed by its president and secretary, and the trustee has subscribed his name and affixed his seal the day and year first above written.

[SEAL.] La Crosse and Milwaukee Railroad Company, by—
N. P. STANTON, *President*,
LOCKWOOD L. DOTY, *Secretary*.
WILLIAM BARNES, *Trustee*. [SEAL.]

Signed, sealed, executed and delivered in our presence as to the La Crosse & Milwaukee Railroad Company, by N. P. Stanton, President—

BYRON KILBOURN.
T. W. BEAVER.

Signed, executed and delivered in our presence, as to Lockwood L. Doty, secretary of said La Crosse & Milwaukee Railroad Company—

EDWARD P. WHALING.
T. W. BEAVER.

Signed, sealed, executed and delivered in our presence, as to William Barnes, the said trustee—

JOHN G. WHITE.
ISAAC EDWARDS.

63 STATE OF WISCONSIN, *County of Milwaukee, ss:*

Be it remembered, that on this twenty-fourth day of August, eighteen hundred and fifty-eight, before me, personally appeared Nehemiah P. Stanton, described in, and who executed, the above instrument in writing as the president of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the said instrument as president as aforesaid, freely for the purposes therein stated, and I certify that the said person, who made the said acknowledgment, is personally known to me to be the individual described in, and who executed, the said instrument. And the said Nehemiah P. Stanton, being by me duly sworn, says that he is the president of the La Crosse and Milwaukee Railroad Company, the above-named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the said board of directors thereof.

In testimony whereof, I have hereunto set my hand and seal official, at my office, No. Third street, in the city of Milwaukee, the day and year above written.

Given under my hand and official seal the day and year above written.

[SEAL.] EDWARD P. WHALING,
Notary Public, Milwaukee county, Wisconsin.

STATE OF WISCONSIN, *County of Milwaukee, ss:*

Be it remembered, that on this 24th day of August, eighteen hundren and fifty-eight, before me personally appeared Lockwood L. Doty, to me well and personally known to be the person described in, and who executed, the above instrument in writing as secretary of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the same freely and as the free act and deed of the said La Crosse and Milwaukee Railroad Company, for the uses and purposes therein mentioned, and the said Lockwood L. Doty, being by me duly sworn, says that he is the secretary of the La Crosse and Milwaukee Railroad Company, the abovenamed corporation, and that the seal affixed to the above instrument is the corporate seal of

the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof, I have hereunto set my hand and seal official, at my office, No. Third street, in the city of Milwaukee, the day and year above written.

Given under my hand and official seal the day and year above written.

[SEAL.] EDWARD P. WHALING,
Notary Public, Milwaukee county, Wisconsin.

STATE OF NEW YORK, *County of Albany, ss:*

Be it remembered, that on the sixteenth day of August, in the year one thousand eight hundred and fifty-eight, before me, the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin to take the acknowledgment and proof of the execution of deeds or other conveyances or leases, and of any contract, letter of attorney, or other writing under seal or not, administer oaths, and take and certify depositions, to be used or recorded in the said State of Wisconsin, appeared William Barnes, described in, and who executed, the above instrument of writing between him as one of the parties thereto and the La Crosse and Milwaukee Railroad Company, the other party thereto, and the said William Barnes acknowledged that he executed the said instrument freely for the purposes therein stated; and I certify the said person who made the said acknowledgment is personally known to me to be the individual described in, and who executed, the said instrument.

In testimony whereof, I have hereunto set my hand and seal official, at my office No. seventy-one State street, in the city of Albany, the day and year first above written.

Given under my hand and official seal the day and year above written.

[SEAL.] EDWARD WADE,
Commissioner of the State of Wisconsin in and for the State of New York.

Recorded Sept. 1st, 1858, at 8 o'clock a. m.

64 *Replication.*

And afterwards, to wit, on the second day of May, A. D. 1864, came the complainants, by their counsel, and filed their replication to the answer of the Milwaukee and Minnesota Railroad Company in the words and figures following, to wit:

Circuit court of the United States in and for the district of Wisconsin.

The replication of F. P. James *et als.*, complainants, to the answer of the Milwaukee and Minnesota Railroad Company.

This repliant, saving and reserving unto himself all and all manner of advantage of exceptions to the manifold insufficiencies of the said answer, for replication thereunto saith that he will aver and prove his said bill to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain

untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed, and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct, and humbly pray as in and by his said bill he hath already prayed.

FINCHES, LYNDE & MILLER,
Compl'ts' Sol'rs.

Stipulation.

And afterwards, to wit, on the 16th day of July, 1864, came the defendant, the Milwaukee and Minnesota Railroad Company, by Matt. H. Carpenter, its solicitor, and filed the stipulation of the parties extending the time for taking testimony herein to the first day of September next, but that such stipulation is not to prevent a hearing at the next term of this court, which said stipulation is in the words and figures following, to wit:

Circuit court of the United States for district of Wisconsin, in equity.

65 FREDERIC P. JAMES *et als.*
vs.
THE MILWAUKEE AND MINNESOTA RAILroad Company and others.

It is hereby stipulated that the time to take testimony in this cause be, and the same hereby is, extended to the 1st day of September next; this extension of time not to prevent a hearing at the next term of said court. Dated July 16, 1864.

WM. P. LYNDE,
Sol'r for Complainants.
MATT. H. CARPENTER,
Sol'r for Def't, for whom I have answered.

And afterwards, to wit, on the 31st day of August, 1864, five packages of depositions were received from the post office and filed; and afterwards, to wit, on the 3d day of September, 1864, deposition was received from the post office and filed; and afterwards, to wit, on the 5th day of September, 1864, deposition was received from the post office and filed.

Affidavit and motion for commission.

And on the same day came the defendant, the Milwaukee and Minnesota Railroad Company, by its counsel, and filed its affidavit and motion for an order to show cause why a commission should not issue to take the testimony of co-defendants in the words and figures following, to wit:

Circuit court of the United States for the 9th circuit and district of Wisconsin, in equity.

FREDERICK P. JAMES, compl'ts,
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company and others, def'ts.

DISTRICT OF WISCONSIN, *ss:*

Alexander Fleming, being first duly sworn, on oath says that he is one of the directors and a member of the board of directors of the abovenamed Milwaukee and Minnesota Railroad Company, and one of the defendants, and that he is the agent for said company to attend to its interests in this suit; that he knows the contents of the bill of complaint and answers of the defendants therein; that N. P.
66 Stanton, Albert C. Gunnison, William A. Guest, and Horatio G. Gilbert, of the city and State of New York, and George W. Luther, William Gould, William Watson, Alfred Noxon, and William Barnes, residing in or near Albany, in the State of New York, are each and every of them material and necessary witnesses for and on behalf of said railroad company, defendant; and that as he is advised and believes their attendance cannot be compelled in the district of Wisconsin, and that it is therefore necessary to take their testimony in the usual way upon commission or commissions. This affiant further says that on the 30th day of May, 1864, or about that day, the complainants' solicitors served upon the solicitor of the said Milwaukee and Minnesota Railroad Company a notice entitled in this cause as follows: "You will take notice that the complainants in the above-entitled cause desire that the evidence to be adduced in said cause shall be taken orally before Jed. P. C. Cottrell, one of the commissioners and examiners of said court, on the 1st day of June, A. D. 1864, at nine o'clock in the forenoon, in the city of Milwaukee.

"FINCHES, LYNDE & MILLER,
"*Compl'ts' Sol'rs.*

"To MATT. H. CARPENTER, Esq.,
"*Sol'r for def'ts, Mil. and Minn. R. R. Co.*"

And at the same time a copy of an order entitled in said cause as follows: "On motion of Finches, Lynde & Miller, complainants' solicitors, it is hereby ordered that the deposition of Alfred Noxon and Selah Chamberlain, witness to be produced, sworn, and examined before me, shall be taken on the first day of June, A. D. 1864, at nine o'clock in the forenoon of that day, at my office in the city of Milwaukee, and that a copy of this order be served on the solicitor for the defendants, the Milwaukee and Minnesota Railroad Company, on the 30th day of May, A. D. 1864.

"J. P. C. COTTRELL,
"*U. S. Commissioner, Dist. Wisconsin.*"

This affiant further says that on the said first day of June, 1864, he repaired to the office of Matt. H. Carpenter, counsel for said company, defendants, and was informed by him that he had consented, upon request, to an adjournment of said examination to the following day, and that on the day following he again repaired to
67 the office of said counsel for the purpose of attending said examination, and was then informed by said counsel that the said complainants did not desire examination at present; and this said affiant is informed and believes that no testimony has been taken under the said notice.

This affiant further says that relying upon said notice, and being informed by the counsel of said company that all the testimony to be taken in said cause by said complainants would have to be taken orally before said examiner unless otherwise ordered by the court or a judge, and that the interests of the said defendants did not require the taking of testimony on behalf of said defendants unless said complainants should take testimony in this cause, this affiant has omitted to cause any testimony to be taken therein. This affiant further says, on information and belief, that the said complainants are now taking testimony ex parte and without notice in this cause, in the city of New York, in pretended pursuance of the act of Congress in that behalf.

This affiant further says that the time for taking testimony in this cause has been extended by stipulation only to the 1st day of September next; that there is not now time to take the testimony of said witnesses hereinbefore mentioned on commission before said 1st day of September.

A. FLEMING.

Subscribed and sworn to before me the 24th day of August, 1864.

WM. G. WHIPPLE,
U. S. C't Commissioner, Dist. of Wisconsin.

Circuit court of the United States for the 9th circuit and district of Wisconsin, in equity.

FREDERICK P. JAMES, compl't,
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company and others, def'ts.

To Finches, Lynde & Miller, solicitors for complainants :

Take notice that I shall apply to the honorable Samuel F. Miller, presiding judge of said court, at his chambers at Keokuk, in the State of Iowa, on the 30th day of August, A. D. 1864, at 2 o'clock p. m., for an order on you to show cause before him at the office of the clerk of said court in Milwaukee, in said district, on the
68 second Monday of September, A. D. 1864, at 2 o'clock in the afternoon of that day, why the said Milwaukee and Minnesota Railroad Company should not be permitted to take the testimony of N. P. Stanton, Albert C. Gunnison, William A. Guest, Horatio G. Gilbert, George W. Luther, William Gould, William Watson, Alfred

Noxon, and William Barnes, in the usual way on commission, and why the time to take testimony in this cause should not be extended sixty days from said second Monday of September, A. D. 1864, or for such other as the nature of the case requires. This application will be founded upon the foregoing affidavit of Alexander Fleming hereto attached. Dated August 24th, 1864.

M. H. CARPENTER,
Sol. for Def'ts.

Indorsed: We admit service of a copy of the within this 24th day of August, A. D. 1864.

FINCHES, LYNDE & MILLER,
Compl'ts' Solicitors.

Order to show cause.

And on the same day the said defendant, the Milwaukee and Minnesota Railroad Company, filed an order to show cause in the words and figures following, to wit:

Circuit court of the United States for the district of Wisconsin.

F. P. JAMES
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company *et als.*

On reading the affidavit of A. Fleming, and on application of solicitor for the Milwaukee and Minnesota Railroad Company, I order that the complainant show cause before me, at the office of the clerk of said court at Milwaukee, on second Monday of September, 1864, at two o'clock p. m., why the said defendant should not have an order allowing the said defendant and the other defendants mentioned in said affidavit to take the testimony of the witnesses stated in said affidavit to be necessary to them respectively, on commission in the usual way, or for such other relief as the nature of the case may require. Dated August 30, 1864.

SAM. F. MILLER, *Judge.*

Motion for inj'n and receiver.

And afterwards, to wit, on the 13th day of September, 1864, came the parties, by their counsel, and the complainants filed their motion that an injunction be allowed and a receiver be appointed as prayed for in the bill of complaint on file, in the words and figures following, to wit:

69 Circuit court of the United States in and for the district of Wisconsin, in equity.

FREDERIC P. JAMES, ABRAM M. BREWER, and others
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company and others.

And now comes the said complainants, by Finches, Lynde & Miller, their solicitors, and moves the court now here, upon the records, papers, and proceedings in the above cause, that an injunction be allowed and issued in pursuance of the prayer of the bill, and that a receiver be appointed as prayed by said bill, Sept. 13, 1864.

FINCHES, LYNDE & MILLER,
Compl'ts' Sol'rs.

And thereupon it is ordered by the court that said motion be, and the same is hereby, set down for hearing Monday next. And on the same day came the parties, by their counsel, and by consent it is ordered by the court that the depositions on file in this cause be, and the same are, published.

Motion to suppress.

And afterwards, to wit, on the 16th day of September, 1864, came the parties, by their counsel, and the defendant, the Milwaukee and Minnesota Railroad Company, filed its motion and affidavit to suppress testimony, in the words and figures following, to wit:

Circuit court of the United States for the district of Wisconsin, in equity.

FREDERICK P. JAMES *et als.*
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company and others.

Here in court comes the Milwaukee and Minnesota Railroad Company, by Matt. H. Carpenter, its solicitor, and moves the court here to suppress the depositions taken and returned into this court in this cause by the complainants, without notice to this defendant, that is to say:

1. The deposition of Alfred Noxon, taken August 25, 1864, before John A. Osborn, commissioner.

2 The deposition of William Gould, taken September 1, 1864,
70 before Robert J. Hilton.

3. The deposition of Russel Sage, taken August 21, 1864, before John Osborn, commissioner.

4. The deposition of William A. Guest, taken August 23, 1864, before said Osborn, commissioner.

5. The deposition of William Platt, taken August 24, 1864, before said Osborn, commissioner.

6. The deposition of Ludlow A. Battershall, taken August 25, 1864, before said Osborn, commissioner.

7. The deposition of Stephen H. Alden, taken August 29, 1864, before George F. Betts, commissioner.

8. The deposition of N. P. Stanton, taken August 29, 1864, before the said commissioner.

9. The deposition of Albert C. Gunnison, taken August 30, 1864, before said Betts, commissioner.

10. And all other depositions taken in this cause by the complainants without notice.

And this defendant asks leave to read in support of this motion the affidavit of Matt. H. Carpenter hereto attached.

Dated September 13, 1864.

MATT. H. CARPENTER,
Sol'r for said Mil. and Minn. R. R. Co.

Circuit court of the United States for the district of Wisconsin, in equity.

FREDERICK P. JAMES *et als.*
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company and others.

DISTRICT OF WISCONSIN, *ss:*

Matt. H. Carpenter, being first duly sworn, on oath says, that on or about the 30th day of May, 1864, and he believes on that day, the solicitors of the complainants in this cause served upon him, as solicitor as aforesaid, a notice and copy of an order in this cause, copies of which are written below and marked Exhibit No. 1 and Exhibit No. 2, respectively; and that he was ready to attend the taking of the testimony in said cause according to said notice and order, and
71 made no objection thereto; that on the day fixed in the order and notice he sent his clerk to the office of said Cottrell to ascertain whether the complainant was ready to proceed with said testmony, and said clerk returned with the word that said complainants desired to have said taking of testimony continued to the next morning; that on the next morning he again sent for that purpose to the office of said Cottrell, and the clerk returned with word that said complainant had concluded not to take said testimony at that time; and this affiant believes that no testimony was ever taken in this cause before said Cottrell under said notice and order.

MATT. H. CARPENTER.

Subscribed and sworn to before me this 13th day of September, A. D. 1864.

A. SCOTT SLOAN,
Clerk Circuit Court U. S., Wis.

Exhibit No. 1.

U. S. circuit court, dis. of Wisconsin.

FREDERICK P. JAMES, ABRAM M. BREWER, E. Bradford Greenleaf, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, and J. Howard Mitchell
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company, The La Crosse and Milwaukee Railroad Company, and Selah Chamberlain.

You will take notice that the complainants in the above-entitled cause desire that the evidence to be adduced in this cause shall be taken orally before Jed. P. C. Cottrell, one of the commissioners and examiners of said court, on the first day of June, A. D. 1864, at 9 o'clock in the forenoon, at his office in the city of Milwaukee.

FINCHES, LYNDE & MILLER,
Compl'ts' Sol'rs.

To MATT. H. CARPENTER, Esq.,
Sol. for Def't, Mil. and Minn. R. R. Co.

Exhibit No. 2.

U. S. circuit court, district of Wisconsin.

FREDERICK P. JAMES, ABRAM M. BREWER, E. Bradford Greenleaf, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, J. Howard Mitchell
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company, The La Crosse and Milwaukee Railroad Company, and Selah Chamberlain.

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On motion of Finches, Lynde & Miller, complainants' solicitors, it is hereby ordered that the depositions of Alfred Noxon and Selah Chamberlain, witnesses to be produced, sworn, and examined before me, shall be taken on the first day of June, A. D. 1864, at 9 o'clock in the forenoon of that day, at my office in the city of Milwaukee, and that a copy of this order be served on the solicitor for the defendant, the Milwaukee and Minnesota Railroad Company, on the 30th day of May, A. D. 1864.

J. P. C. COTTRELL,
U. S. Commissioner, Dist. of Wisconsin.

To Finches, Lynde & Miller, solicitors for compl't in the above-entitled cause:

GENT.: Take notice that on the opening of the said court, at the court-house in Milwaukee, on the 16th day of September, A. D. 1864, or as soon thereafter as counsel can be heard, the foregoing motion will be made, founded on the foregoing affidavit of Matt. H. Carpenter.

Sept. 13, 1864. MATT. H. CARPENTER,
Sol. for Def't, Mil. and Minn. R. R. Co.

Indorsed: We admit due service on us this 14th day of Sept., 1864, of a copy of this motion, affidavit, and notice.

Hearing of motion.

And on the same day the said motion came on to be heard and was argued by counsel; whereupon the court took the same under advisement.

And on the same day came the parties, by their counsel, and the motion of the defendant, the Milwaukee and Minnesota Railroad Company, to enlarge the time for taking testimony in this cause, and to take the testimony of certain witnesses, came on to be heard, and was argued by counsel; whereupon the court took the same under advisement.

73 And afterwards, to wit, on the 20th day of September, 1864, came the parties, by their counsel, and it is ordered by the court that the motion made by the defendant, the Milwaukee and Minnesota Railroad Company, to suppress the depositions taken under the act of Congress without notice, be and the same hereby is overruled.

Ordered further, that the motion made by the defendant, the Milwaukee and Minnesota Railroad Company, for leave to take the testimony of the several defendants on behalf of itself, be and hereby is granted; and ordered that each of the defendants may take the testimony of each and every other defendant in this cause or commission, in the usual way, subject to all proper objections thereto when taken. And ordered that the time for taking testimony in this cause be and the same hereby is extended to the first Monday of December next.

Exceptions.

And on the same day came the defendant, the Milwaukee and Minnesota Railroad Company, by M. Carpenter, its solicitor, and filed its exceptions to the order of said court overruling its motion to suppress the depositions in this cause taken without notice, in the words and figures following, to wit:

Circuit court United States, district of Wisconsin, in equity.

F. P. JAMES
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company and others.

Here in court comes the Milwaukee and Minnesota Railroad Company, by its solicitor, and makes and files its exceptions to the order of said court overruling its motion to suppress the depositions taken in this cause without notice, mentioned in said motion.

Dated September 21, 1864.

MATT. H. CARPENTER,
Sol. for Def't, Mil. and Minn. R. R. Co.

Motion and aff't for continuance.

And afterwards, to wit, on the 27th day of September, 1864, came the defendant, the Milwaukee and Minnesota Railroad Company, by its counsel, and filed its motion and affidavit for a continuance of the motion for an injunction and receiver in this cause to the next April term, in the words and figures following, to wit:

74 Circuit court of the United States for 9th circuit and district of Wisconsin, in equity.

FREDERICK P. JAMES and OTHERS
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company and others.

DISTRICT OF WISCONSIN, *ss:*

Alexander Fleming, being first duly sworn, on oath says, that he is a stockholder and director and member of the board of directors of the Milwaukee and Minnesota Railroad Company, and is its agent, and as such agent has charge of its interests in this cause; that he has fully and fairly stated to said company's counsel, Matt. H. Carpenter, of Milwaukee, the facts and circumstances constituting the case in this cause, and that after such statement to said counsel this affiant is informed by said counsel, and verily believes, that said Milwaukee and Minnesota Railroad Company has a perfect defence in this cause on the merits.

This affiant further says, that the said complainants have caused to be taken and filed in this cause ten or eleven ex parte depositions under the act of Congress, taken without notice, and that the said Milwaukee and Minnesota Railroad Company has, at this term of court, obtained an order of this court to take the testimony of most of the said witnesses on its behalf, but has not yet had reasonable time to take the same. This affiant further says, that he expects that said Milwaukee and Minnesota Railroad Company will be able to show and prove by the testimony of said witnesses, when taken, and other witnesses, that all the statements and allegations, matters and

things, contained in the answer of the Milwaukee and Minnesota Railroad Company and other defendants in this cause are true. This affiant further says, that steps would have been earlier taken to procure the testimony of said witnesses but that this affiant and the counsel of said company were misled by a notice served in this cause by the complainants, to the effect that the complainants desired all the testimony to be adduced in this cause to be taken before J. P. C. Cottrell, examiner of said court.

75 This affiant, therefore, respectfully prays said court, on behalf of the said Milwaukee and Minnesota Railroad Company, that the hearing of the complainants' application for appointment of receiver and injunction in this cause may be postponed until the April term of this court, A. D. 1865.

This affiant further says, that the said counsel of said company will necessarily be in the city of Washington in attendance upon the Supreme Court of the United States, as this affiant is informed and verily believes, and that the presiding judge of this court will be unable to attend the January term of this court, as this affiant is informed and believes.

A. FLEMING.

Subscribed and sworn to before me this 27th day of September, A. D. 1864.

A. SCOTT SLOAN,
Clerk Circuit Court U. S., Wis.

Order continuing hearing of motion.

And the same came on to be heard and was argued by counsel, and on consideration thereof it is ordered by the court that the hearing of said motion be and the same is continued to the next term of this court.

Affidavit and order extending time.

And afterwards, to wit, on the 14th day of November, A. D. 1864, came the defendant, the Milwaukee and Minnesota Railroad Company, by its solicitor, and filed affidavit, with an order of the district judge extending the time for taking testimony in this cause until the first Monday of February next, in the words and figures following, to wit :

Circuit court of the United States for the 9th circuit and district of Wisconsin, in equity.

F. P. JAMES and OTHERS
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD and others.

DISTRICT OF WISCONSIN, *ss :*

Matt. H. Carpenter, being first duly sworn, on oath says, that he is solicitor for the Milwaukee and Minnesota Railroad Company and other defendants in this cause, and that he believes that their inter-

ests require the taking the testimony of divers witnesses,
76 residents and non-residents of this State; that owing to a press of professional and other engagements he has been unable, prior to this time, to take said testimony, and that the time to take testimony in this cause will expire about the first Monday of December next; that he expects to be absent from Milwaukee attending the supreme court of the State of Wisconsin some portion of the time between this and the said first Monday of December next; and he therefore prays that the time for taking testimony in this cause may be extended to the first Monday of February next.

M. H. CARPENTER.

Subscribed and sworn to before me this 14th day of November, A. D. 1864.

J. M. MILLER,
Clerk U. S. District Court, Wisconsin.

Circuit court of the United States for the 9th circuit and district of Wisconsin, in equity.

FREDERICK P. JAMES and OTHERS
ag'st
THE MILWAUKEE AND MINNESOTA RAILROAD Company and others.

DISTRICT OF WISCONSIN, *ss:*

On reading and filing the affidavit of Matt. H. Carpenter, showing cause, I hereby order that the time for taking testimony in this cause be and the same hereby is extended to the first Monday of February next. Dated November 14, A. D. 1864.

A. G. MILLER, *District Judge.*

Rule for commission.

And afterwards, to wit, on the 19th day of December, A. D. 1864, came the defendant, the Milwaukee and Minnesota Railroad Company, by Matt. H. Carpenter, its solicitor, and entered in the order and rule book a rule that a commission issue out of and under the seal of this court, to be directed to James G. Jenkins, esq., a commissioner to take the testimony of Russell Sage, Nehemiah P. Stanton, and William Barnes, on written interrogatories in the words and figures following, to wit:

Circuit court of the United States for the ninth circuit and district of Wisconsin, in equity.

77 FREDERICK P. JAMES and OTHERS
vs.
THE MILWAUKEE AND MINNESOTA RAILroad Company and others.

On motion of Matt. H. Carpenter, solicitor for the Milwaukee and Minnesota Railroad Company, one of the defendants in this cause, it

is ordered that a commission issue out of and under the seal of this court, to be directed to James G. Jenkins, commissioner, to take the testimony of Russell Sage, Nehemiah P. Stanton, and William Barnes on written interrogatories. Dated December 19, 1864.

MATT. H. CARPENTER,
Sol. for the Milwaukee and Minnesota Railroad Company, Def't.

And also filed interrogatories to be annexed to said commission.

Motion to suppress.

And on the same day came the defendant, the Milwaukee and Minnesota Railroad Company, by its solicitor, and filed its five several motions to suppress a portion of the depositions of Russell Sage, William Platt, William Gould, Alfred Noxon, and William A. Guest, taken by the complainants without notice, in the words and figures following, to wit:

Circuit court of the United States for the 9th circuit and district of Wisconsin, in equity.

FREDERIC P. JAMES and OTHERS
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company and others.

Here in court comes the Milwaukee and Minnesota Railroad Company, by Matt. H. Carpenter, its solicitor, and moves the court here to suppress of and from the deposition of Russell Sage taken by the complainants, in the city of New York, before John A. Osborn, a commissioner, on the 21st day of August, 1864, the following matters, and therein contained, as follows, that is to say—

1st "I have a copy of the assignment of the said judgment, and now produce it to the commissioner. Said copy offered in evidence, marked Exhibit 'A,' J. A. O. I have looked for the original of that assignment and have been unable to find it. The original was
78 in my possession. I know Ex. A, J. A. O. to be a true copy;" and, also, said Exhibit A, J. A. O. For the reason that the said witness does not sufficiently show the loss or destruction of the original, nor does sufficiently show that said Exhibit A is a true copy of said pretended original.

Also the following: "Prior to that date injunctions had been granted enjoining said Barnes from making said sales." For the reason that the same is incompetent.

And also the following portion, that is to say: "At the time these two parties appeared to exchange these bonds for stock, Battershall said that he had allowed Gunnison to use his name as the owner of the bonds, but that he, Battershall, had no interest in them. Gunnison said they were a part of the Chamberlain lot of bonds, so called, which had previously been sold in New York at about five cents on a dollar." For the reason that the same is incompetent, being merely hearsay, neither the said Gunnison or the said Battershall being parties to this suit.

And the following portion: "This was all said and done at the time they appeared with the bonds and demanded the stock in exchange. At the time of this conversation it was the first knowledge or intimation I had of the ownership of these bonds by Gunnison; prior to this I had supposed that Battershall was the true and bona fide owner, and had used his power of attorney under such impression." For the reason that the same is immaterial, incompetent, hearsay.

And also the following portion of said deposition, in which the witness, speaking of William Platt, says: "And at the time of the conversion of the said bonds into stock he said that he had taken $100,000 of the La Crosse and Milwaukee R. R. Company bonds at the sale of the Selah Chamberlain lot of $400,000, and that he had agreed with one Aaron S. Bright to let him, Bright, have $50,000 of said $100,000 at cost, which was five cents on the dollar, and brokerage, on condition that he, Bright, should secure a loan for said
79 Platt sufficient to pay for the other $50,000, at the rate of five cents on the dollar, and brokerage." For the the reason that the same is incompetent and hearsay, the said Platt not being a party to this suit.

And also that portion of said deposition in which the witness, speaking of Alfred Noxon, says: "And I understood said Noxon to state that said $75,000 was a part of said Chamberlain lot of $400,000, as before stated." For the reason that the same is incompetent and hearsay, the said Noxon not being a party to this suit.

And said company, by its said solicitor, moves here and now to strike out each and every of the portions of said deposition as hereinbefore mentioned, for the reasons respectively alleged therefor.

MATT. H. CARPENTER,
Solicitor for the Mil. and Minn. R. R. Co., Def't.

Circuit court of the United States for the 9th circuit and district of Wisconsin.

FREDERICK P. JAMES *et als.*
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company and others.

Here in court comes the said Milwaukee and Minnesota Railroad Company, by Matt. H. Carpenter, its solicitor, and moves the court here to suppress of and from the deposition of William Pratt, taken ex parte by complainants before A. O. Osborn, Aug. 25, 1864, the parts and portions thereof, as follows, viz:

1. "I understood from different directors that the consideration of that note was money which Mr. Chamberlain had advanced to lift incumbrances on real estate belonging to the company."

2. And also that portion as follows, viz: "I have heard some of the directors, and Mr. Chamberlain, say that the bonds were offered for sale, but did not obtain a bid."

3. Also that portion as follows, viz: "I understood then and understand now that after the bonds had been put up and there was no

bid or offer for them, parties contributed the amount to pay the note, and divided up the bonds pro rata in proportion to the
80 amount to which they contributed." For the reason that the same is incompetent testimony, being merely hearsay.

4. And also that portion thereof which is as follows, viz: "One Aaron S. Bright contributed, I think, $\frac{1}{4}$ of the amount, which, if that was the amount he contributed, would entitle him to $100,000 of the bonds." For the reason that the same is incompetent, mere hearsay, and the expression of an opinion or belief, and immaterial.

5. Also that portion which is as follows: "I have heard from Albert C. Gunnison, who was at the time he informed me a director of the company, that he, Gunnison, had contributed and took a part of the bonds; my best recollection is that he told me this at or about the time of the transfer of the bonds." For the reason that the same is incompetent, mere hearsay, said A. C. Gunnison not being a party to this suit.

6. Also that part which is as follows: "After the bonds had been put up for sale and there were no bids, there were parties who advanced the full amount of the note." For the reason that it appears from the said deposition that said witness has no knowledge of the manner in which said bonds were disposed of, or the circumstances attending the same.

7. Also that part thereof which is as follows: "I know by the statement of the directors and also by the statement of Mr. Chamberlain that the La Crosse and Milwaukee R. R. Co. took up the note." For the reason that the same is incompetent, mere hearsay, neither said directors being parties to said suit, and the admissions and statements of said Chamberlain being no evidence against this defendant, and the said Chamberlain having filed no answer in the case, said admission is not needed against him.

8. Also that portion thereof which is as follows: "I think
81 that Bright did not pay more than 6 cents on the dollar for those bonds." For the reason that the same is a mere opinion or guess and does not purport to be matter within the knowledge of the witness.

MATT. H. CARPENTER,
Sol. for the Mil. and Minn. R. R. Co., Def't.

Circuit — United States for the 9th circuit and district of Wisconsin, in equity.

FREDERICK P. JAMES and OTHERS
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company and others.

Here in court comes the Milwaukee and Minnesota Railroad Company, by Matt. H. Carpenter, its solicitor, and moves the court here to suppress of and from the deposition of Alfred Noxon, taken by said complainant ex parte before John A. Osborn, commissioner, in New York city, August 25, 1864, as follows, viz:

The answer to the first interrogatory as follows: "I have been told by A. C. Gunnison and others of the three directors that they, with some of their friends, had taken them at a price which would pay the principal and interest of the note. This statement was made to me by A. C. Gunnison and others about the time the bonds were taken from Meigs and Greenleaf." For the reason that said interrogatory was and is improper, and the said answer thereto was and is immaterial, incompetent, and hearsay, the said Gunnison not being a party to this suit.

Also the answer to the 10th interrogatory, as follows, viz: "From my own absolute knowledge I know nothing as to who became the owners of these bonds, but I have been told by A. C. Gunnison, William Platt, and A. S. Bright that they purchased some of the 3d mortgage bonds sold by Meigs and Greenleaf," and each and every part thereof, because the said 10th interrogatory was and is improper, and the said answer is incompetent, immaterial, and hearsay, said A. C. Gunnison not being a party to the suit.

82 Also that part of the answer to the 21 interrogatory, which is as follows: "I think I have heard it from Mr. Stanton," because the same is incompetent and hearsay, said Stanton not being a party to this suit.

Also the answer to the 22d interrogatory, as follows: "I have understood from parties in interest, but who I cannot now remember, that they were offered for sale, no bids being made; they were then sold at private sale, Gunnison, Bright, Platt, and others taking them at about 5 per cent on the dollar." For the reason that said interrogatory was and is improper, and said answer incompetent and hearsay.

Also the answer to the 25 interrogatory, as follows: "From information and belief I think it was." For the reason that the said interrogatory was and is improper, and the said answer is incompetent and hearsay.

Also that part of said deposition which is as follows: "Kennedy consulted and advised with me about the purchase of those bonds before he purchased them. At the time of this interview with Kennedy I told him that there was a chance for him to make a good deal or lose a little, and if I was not a director I would take the chance, but as I was situated I could not do it." For the reason that the same is incompetent and immaterial.

MATT. H. CARPENTER,
Sol. for the Mil. and M. R. R. Co., Def't.

Circuit court United States for the 9th circuit and district of Wisconsin, in equity.

FREDERICK P. JAMES and OTHERS
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company and others.

Here in court comes the Milwaukee and Minnesota Railroad Company, by Matt. H. Carpenter, its solicitor, and moves the court

here to suppress of and from the deposition of William A.
83 Guest taken by said complainants ex parte, before John A. Osborn, commissioner at New York, on the 23d day of August, A. D. 1864, the portions following, that is to say: "I was told that these bonds were deposited with Meigs & Greenleaf, but who told me I cannot remember." For the reason that the same is irrelevant, incompetent, and hearsay.

M. H. CARPENTER,
Sol. for the Mil. and M. R. R. Co., Def't.

Circuit court of the United States for the 9th circuit and district of Wisconsin, in equity.

FREDERICK P. JAMES *et al.*
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company *et als.*

Here in court comes the Wilwaukee and Minnesota Railroad Company, by Matt. H. Carpenter, its solicitor, and moves the court now here to suppress of and from the deposition of William Gould, taken by the complainants ex parte before Robert J. Hilton, commissioner, at the city of Albany, New York, on the first day of September, A. D. 1864, in which said witness, speaking of certain bonds purchased by him from one Watson, says: "Which he held as collateral security for a loan which I understood he had made to the said railroad company." For the reason that the same is incompetent, hearsay, said Watson not being party to this suit.

M. H. CARPENTER,
Sol. for Mil. and M. R. R. Co., Def't.

And afterwards, to wit, on the 22d day of December, 1864, evidence by stipulation was filed.

84 *Cross-int. and objections.*

And afterwards, to wit, on the 23d day of December, A. D. 1864, came the complainants, by their solicitors, Messrs. Finches, Lynde & Miller, and filed their cross-interrogatories, with their objections to certain interrogatories of the defendant, and naming commissioners.

Objections to cross-in.

And afterwards, to wit, on the 27th day of December, 1864, came the defendant, the Milwaukee and Minnesota Railroad Company, by its solicitor, and filed exceptions to the cross-interrogatories of the complainant.

Notice.

And also came Matt. H. Carpenter, esq., and filed notice, with proof of service indorsed, that he only appeared for the defendant, the Milwaukee and Minnesota Railroad Company, in the words and figures following, to wit:

Circuit court of the United States for the 9th circuit and district of Wisconsin, in equity.

FREDERICK P. JAMES
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company and others.

To Messrs. Finches, Lynde & Miller, esq'rs, sol'rs for compl't:

GENT.: I notice some of the papers served by me in this cause are signed by me as solicitor for the "said defendants." This is a mistake. In this cause I appear, and am authorized to appear only, for the Milwaukee and Minnesota Railroad Comp'y, one of the defendants. Yours, &c.,

MATT. H. CARPENTER.

Dated December 27, 1864.

Indorsed: Copy of within notice served on us this 27th day December, 1864.

FINCHES, LYNDE & MILLER,
Sol'rs for Complainants.

Commission.

And afterwards, to wit, on the 30th day of December, 1864, commission issued to James G. Jenkins and George F. Betts, to take the testimony of Russell Sage and Nehemiah P. Stanton; and to
85 James G. Jenkins and Robert J. Hilton, to take the testimony of William Barnes.

And afterwards, on the 5th day of January, 1865, stipulated testimony was received from Matt. H. Carpenter and filed.

Stipulation extending time.

And afterwards, to wit, on the 26th day of January, 1865, a stipulation to extend the time to take testimony to the first Monday of April next, was filed in the words and figures following, to wit:

Circuit court of the United States for the district of Wisconsin.

FREDERICK P. JAMES
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company and others.

The respective parties hereto stipulate that the time for taking testimony in this cause be, and hereby is, enlarged and extended to the first Monday of April next, without prejudice to the right of either party to set this cause down for hearing for the April term, 1865.

Milwaukee, 25 Jan'y, 1865.

MATT. H. CARPENTER,
Sol. for Mil. and Minn. R. R. Co.
FINCHES, LYNDE & MILLER,
Sol'rs for Compl'ts.

Depositions filed.

And afterwards, to wit, on the 30th day of January, 1865, depositions received from the post office and filed. And afterwards, to wit, on the 7th day of February, 1865, depositions received from the post office and filed.

Set down for hearing.

And afterwards, to wit, on the 3d day of April, 1865, came the complainants, by their solicitors, and entered in the order and rule book an order setting this cause down for hearing in the words and figures following, to wit:

FREDERICK P. JAMES *et al.*
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company *et al.*

On motion of Finches, Lynde & Miller, compl'ts' solicitors, 86 ordered that the above-entitled cause be, and is hereby, set down for hearing at the April term, 1865, of this court, upon the pleadings and proofs.

FINCHES, LYNDE & MILLER,
Compl'ts' Sol'rs.

Affidavit of A. Fleming.

And on the same day came the defendant, the Milwaukee and Minnesota Railroad Company, by its solicitor, and filed the affidavit of A. Fleming for an order to enlarge the time for taking testimony, in the words and figures following, to wit:

Circuit court of the United States for the district of Wisconsin, in equity.

FREDERICK P. JAMES and OTHERS
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company and others.

DISTRICT OF WISCONSIN, *ss:*

Alexander Fleming, being first duly sworn, on oath says, that he is a director and the agent of the Milwaukee and Minnesota Railroad Company, one of the defendants in this cause, and makes this affidavit on its behalf; that he is familiar with the facts of this cause, and that N. P. Stanton, late president of the La Crosse and Milwaukee Railroad Company, is a nesessary and material witness, without whose testimony the said Milwaukee and Minnesota Railroad Company cannot safely proceed to the hearing of this cause; that on the 30th day of December last a commission was duly issued to James G. Jenkins and George F. Betts, commissioners, to take the testimony of said Stanton, who resides in the city of New York; that said Jenkins went to New York to execute said commission; that the said Stanton was then temporarily absent from the city of New York, and

was not found by said commissioners, and his testimony has not been taken, and the said Stanton has not yet returned to the city of New York, but is somewhere in the southwestern States, as this affiant is informed and believes. This affiant further states that the said commission has been returned to this court

87 This affiant further says that he believes, after the taking of the testimony of said Stanton, it will be necessary to take other testimony, and that if the time to take testimony in this cause be extended to the first day of July, the testimony of said Stanton and said other testimony can and will be taken in this cause; and that this application is made not for mere delay, but in good faith to obtain said testimony.

A. FLEMING.

Subscribed and sworn to before me, this 3d day of April, A. D. 1865.

JAMES McFARLIN,
Commissioner Circuit Court U. S., Dist. of Wis.

Hearing of motion.

And afterwards, to wit, on the 11th day of April, 1865, came the parties, by their counsel, and the motion of the defendant to enlarge the time for taking testimony came on to be heard and was argued by counsel, whereupon the court took the same under advisement.

And afterwards, to wit, on the 12th day of April, 1865, came the parties, by their counsel, and on consideration of the motion to enlarge the time for taking testimony in this cause, and of the arguments of counsel, it is ordered by the court that the time for taking testimony in this cause be, and the same is extended to the first day of July next.

Rule for commission.

And afterwards, to wit, on the 29th day of April, 1865, came the complainants, by their solicitors, and entered their rule for a commission to issue to Geo. F. Betts, esq., of the city of New York, to take the testimony of A. W. Greenleaf, of said city, in the words and figures following, to wit:

Circuit court of the United States in and for the district of Wisconsin.

FREDERIC P. JAMES, ABRAM M. BREWER, E. Bradford Greenleaf, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, and J. Howard Mitchell

vs.

THE MILWAUKEE AND MINNESOTA RAILROAD Company, The La Crosse and Milwaukee Railroad Company, and Selah Chamberlain.

88 On motion of Finches, Lynde & Miller, solicitors for complainants, it is ordered that a commission issue in this cause,

under the seal of the court, directed to George F. Betts, esq., of New York city, and such other commissioner as may be named by the defendant, to take the deposition of A. W. Greenleaf, esq., of the city of New York, a witness to be produced on the part of the complainants, upon the annexed written interrogatories and such cross-interrogatories as may be filed by the defendants.

FINCHES, LYNDE & MILLER,
Sol'rs for Compl'ts.

Cross-int. filed.

And filed interrogatories to be annexed to said commission; and afterwards, to wit, on the 8th day of May, 1865, came the Milwaukee and Minnesota Railroad Company, by its , and filed cross-interrogatories.

Commission issued.

And afterwards, to wit, on the 10th day of May, 1865, a commission issued accordingly.

And afterwards, to wit, on the 15th day of May, 1865, came the defendant, the Milwaukee and Minnesota Railroad Company, and filed testimony, with stipulation of the parties.

And afterwards, to wit, on the 16th day of May, 1865, came the said defendant and filed further testimony, with stipulation.

And afterwards, on the 26th day of May, 1865, depositions were received from the post office and filed.

And afterwards, to wit, on the 30th day of May, 1865, came the defendant, the Milwaukee and Minnesota Railroad Company, and filed testimony, with stipulation of the parties.

And afterwards, to wit, on the 14th day of June, 1865, the stipulation of the parties for publication of depositions filed and depositions published.

And afterwards, to wit, on the 3d day of July, 1865, came the parties, by their counsel, and filed their stipulation as to certain facts to be admitted on the hearing of this cause.

Motion to suppress depositions.

And on the same day came the complainants, by their counsel, and filed their motion to suppress depositions and parts of depositions therein named, in the words and figures following, to wit:

89 In circuit court of United States, district of Wisconsin.

FREDERIC P. JAMES *et als.*
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company *et als.*

And now comes the said complainants and moves the court to suppress all the following testimony, depositions, and parts of depositions in this cause, for the reason that the same, and each and every part thereof, is irrelevant, incompetent, and immaterial, to wit:

First. The exhibits numbered one and two, (1 and 2.) attached to the stipulation dated December 31, 1864, being the bill of Newcomb Cleveland against Selah Chamberlain, and the decree of the United States district court thereon.

Second. All that part of the deposition of Edward G. Ryan in response to the 2d direct interrogatory which speaks of the proceedings in court and details the contents of records and the opinions of Mr. Carpenter and Mr. Lynde upon said documents, papers, and records, and the final result of said causes, and also the contents of papers, writings, deeds, reports of sale, &c.

Also, the 3d question and the answer thereto.

Also, the 4th question and the answer thereto.

Also, the 5th and 6th questions and the answers thereto.

Third. The deposition of William P. Lynde taken before Francis Bloodgood.

Fourth. The deposition of Alexander Mitchell taken before Francis Bloodgood.

Fifth. All that part of the deposition of Austin Gunnison which commences with his pretended additional answer, and each and every exhibit attached thereto forming part of or annexed in connexion with said pretended additional answer.

Sixth. The interrogatories, and answers thereto, propounded to William Barnes, numbered, respectively, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10.

Seventh. To all of the 28th interrogatory propounded to
90 Russell Sage, commencing with the words "and have not the officers of said company," down to and including the words "Milwaukee and Minnesota Railroad Company."

And also the 29th and 30th interrogatory propounded to said witness.

Eighth. All that part of the deposition of Alexander Mitchell taken before Francis Bloodgood beginning with the fifth question, down to and including the last question, and the answers thereto.

Ninth. All that portion of the answers of William Barnes in his deposition taken before Jenkins & Hilton, commissioners, &c.—

1st. That part of the third interrogatory beginning with the words "and what purpose," down to and including the words "delivering the same," and so much of the answer to said question as commences with the words "so far as concerns myself," down to and including the words "am informed and believe."

2d. The 4th interrogatory and the answer thereto.

3d. The 5th interrogatory and the answer thereto.

4th. The 6th interrogatory and the answer thereto.

And particularly each and all of the following parts of said answer, to wit: "On the contrary I understood that persistent efforts were being made to procure a conveyance of the lands claimed from the governor of Wisconsin and to complete the road to the Mississippi river, and to fund all past due mortgage coupons and the floating and judgment debts by the third mortgage bonds, and to raise the credit of the company, and that a verbal arrangement and agreement was consummated on the opening of the road, with Selah

Chamberlain, to pay the accruing interest on the third mortgage bonds, with the particular details of which agreement I am not conversant; that said Chamberlain appointed a time to execute said agreement in writing, but failed to do so, as he was advised by counsel that it would impair his lease and judgment. In my opinion strenuous and persistent efforts, in various directions, were made in good faith by the board to preserve the old organization if possible, and to extricate it from the labyrinth of embarrassments and com-
91 plications in which its affairs were involved. I do not think any board of directors in the country could have succeeded in doing so.

5th. The 7th interrogatory and the answer thereto.

6th. The 10th interrogatory and the answer thereto, and particularly that portion of the answer wherein said witness gives his opinion of the result of his examination.

7th. All that portion of the answer to the 1st cross-interrogatory commencing with the words "on information and belief," and ending with the words "company and others."

9th. All that portion of the answer to the 9th cross-interrogatory, commencing with the words "the previous question," down to and including the words "his instigators."

10th. All of the answer to the 19 cross-interrogatory, commencing with the words "Mr. Sage has repeatedly asseverated to me," down to and including the words "in this and other cases."

FINCHES, LYNDE & MILLER,
Sol'rs for Compl'ts.

Motion to suppress depositions.

Whereupon it is ordered by the court that this cause be set down for hearing on Wednesday morning next. And came the defendant, the Milwaukee and Minnesota Railroad Company, by its solicitor, and filed its motion to suppress parts of the depositions of Russell Sage and A. W. Greenleaf in the words and figures following, to wit:

Circuit court of the United States for the district of Wisconsin, in equity.

FREDERICK P. JAMES and OTHERS
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company *et al.*

Here in court comes the said Milwaukee and Minnesota Railroad Company, defendant, and moves the court now here to suppress parts of the deposition of Russell Sage, taken before Jenkins and Betts, commissioners in this cause, as follows, viz:

In the answer to 15th interrogatory, suppress from and including the words "Barnes told me in Milwaukee that Charles Schley
92 told me," down to and including the words "principal and interest," for the reason that the same is hearsay; and also suppress from the words "that Barnes told me," down to and including

the word "Albany," for the reason that the same is hearsay and immaterial.

2d. In the answer to the 16½ interrogatory, suppress from and including the words "but that is going to Albany," down to and including the words "taking possession," for the reason that the same is hearsay; and also from and including the words "hoping thereby," down to and including the words "value of the property," for the reason, 1st, that the same is immaterial, and 2d, not responsive to any interrogatory propounded to said witness.

3d. In the answer to 17 interrogatory, suppress from and including the words "said organization, &c.," down to and including the words "it was in fact a paper organization," for the reason, 1st, that it is immaterial, and 2d, not responsive to any interrogatory propounded to said witness.

4th. In the answer to the 18 interrogatory, suppress all after the words "I did," for the reasons that the same is immaterial, and 2d, not responsive to any interrogatory propounded to the witness.

5th. In answer to the 22 interrogatory, suppress all after the words "It was not my duty," down to and including the word "stockholders," for the reasons that the same is not responsive to said interrogatory, and that the same is immaterial, and 2d, not responsive.

6th. In answer to the 23d interrogatory, suppress from and including the words "therefor," for the reason that the same is not responsive to said interrogatory, and is immaterial.

7th. In answer to the 24 interrogatory, suppress from and including the words "since there," down to and including the words "fourteenth interrogatory," for the reason that the same is not responsive to said 24 interrogatory or any other, and 2d, that it is immaterial.

93 8th. In the answer to the 25 interrogatory, suppress from and including the words "but he did," down to and including the words "Noxon and myself," for the reason that the same is not responsive to any interrogatory, and is incompetent and immaterial.

9th. In the answer to the 26th interrogatory, suppress from and including the words "for the reason," down to and including the words "principal and interest," for the reason that the same is not responsive to any interrogatory, and is immaterial.

10th. In the answer to the 28th interrogatory, suppress from and including the words "I consider him partially," down to and including the words "black-mailing," for the reason that the same is not responsive and immaterial.

11th. In the answer to the 30 interrogatory, suppress from and including the words "because I now believe," down to and including the word "benefit," for the reason that the same is not responsive and not material.

12th. The Milwaukee and Minnesota Railroad Company also objects to all that part of the 1 cross-interrogatory after the words "third mortgage," for the reason that the same calls for hearsay and incompetent evidence; and moves to suppress all of the answer to that part of said interrogatory objected to, for the reason that the same is incompetent, immaterial, and hearsay.

13th. The said company objects to the 2d cross-interrogatory, for the reason that the same calls for incompetent and hearsay evidence, and moves to suppress the answer thereto, for the reason that the same is incompetent and hearsay.

14th. Said company objects to the 3d cross-interrogatory, for the reason that the same calls for incompetent, immaterial, and hearsay evidence, and moves to suppress the answer thereto, for the reason that the same is incompetent and hearsay, and does not purport to set forth matter within the knowledge of the witness, but the supposed result of certain interrogatories of the witness, called "discoveries."

15th. Said company objects to the 7th interrogatory, for the reason that the same is not proper cross-examination; 2d, that it calls for immaterial evidence, and for mere hearsay declaration; and
94 moves to suppress the answers thereto, for the reasons that the same is immaterial and mere hearsay.

16th. Said company makes the same objections as last above to the 8th cross-interrogatory, and makes the same motion as to the answers thereto.

17th. Said company objects to the ninth cross-interrogatory, for the reasons that the same is not a proper cross-examination; 2d, calls for incompetent and hearsay evidence; and moves to suppress the answer thereto, for the reason that the same is immaterial, incompetent, and hearsay.

MATT. H. CARPENTER,
Sol. for Mil. and Minn. R. R. Co., Def't.

Circuit court of the United States for the district of Wisconsin, in equity.

FREDERICK P. JAMES *et al.*
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company *et al.*

The Milwaukee and Minnesota Railroad Company, defendant, comes here into court, and moves to suppress parts of the deposition of A. W. Greenleaf, taken by complainants in this cause, as follows:

1. Said company objects to the 12th interrogatory, as calling for testimony incompetent and immateriel, and moves to suppress the answer thereto as incompetent and immaterial.

2. Said company moves to suppress that part of the answer to the 13th interrogatory which is as follows, "as brokers we would not have lent any money on the bonds," for the reason that the same is not responsive to said interrogatory.

MATT. H. CARPENTER,
Sol. for Mil. and Minn. R. R. Co.

Hearing of motion to suppress.

And afterwards, to wit, on the 5th day of July, 1865, came the parties, by their counsel, and the motion of the complainants to sup-

press exhibits one and two attached to the bill of complaint
95 of Cleveland *vs.* Chamberlain, filed by stipulation as evidence in this cause, and parts of depositions of E. G. Ryan, W. R. Lynde, Alex. Mitchell, Austin Gunnison, and the exhibits attached thereto, William Barnes and Russell Sage, came on to be heard, and was argued by counsel, whereupon it is ordered by the court that said motion be and the same is overruled.

Hearing.

And this cause came on to be heard upon the pleadings and proofs, and was argued by counsel, and not being concluded, the further hearing is adjourned until to-morrow morning at nine o'clock.

And on the same day came Francis Bloodgood, esq., a commissioner of this court, and filed the depositions of A. Gunnison, J. A. Noonan, S. Chamberlain, Stoddard Judd, and E. G. Ryan, W. R. Lynde, and Alexander Mitchell, which are ordered by the court to be filed, as of July 3, 1865.

Order pro confesso.

And on the same day came the complainants, by their counsel, and on their motion it is ordered by the court that the bill of complaint in this cause be, and the same hereby is, taken as confessed by and against the defendant, Selah Chamberlain, for his having failed to plead, answer, or demur thereto.

Part of dep'n of A. Gunnison stricken from files.

And afterwards, to wit, on the 6th day of July, 1865, it is ordered by the court that all that part of the depositions of Austin Gunnison taken before Francis Bloodgood, on and after the 22d day of December, 1864, and all papers and documents attached to said depositions on and after that date as exhibits, be and the same are stricken from the files.

And the argument of this cause was resumed, and not being concluded, it is adjourned until to-morrow morning at nine o'clock.

And afterwards, to wit, on the 7th day of July, 1865, came the parties, by their counsel, and the argument of this cause was resumed, and being concluded, the court took the same under advisement.

96 *Testimony.*

UNITED STATES OF AMERICA, *Southern district of New York,*
City, county and State of New York, ss:

Be it remembered, that on this twenty-fifth day of August, in the year of our Lord one thousand eight hundred and sixty-four, I, John A. Osborn, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes

depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office at 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, Ludlow A. Battershall, to testify, and the truth to say on the part and behalf of the complainants in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States for the district of Wisconsin, at Milwaukee, wherein Frederick P. James, Abram M. Brewer, E. Bradford Greenleaf, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, and J. Howard Mitchell, are complainants ag'st Milwaukee and Minnesota R. R. Company, La Crosse and Milwaukee R. R. Company, and Selah Chamberlain,
97 defendants; and the said Ludlow A. Battershall, being about the age of fifty years, and having been by me first cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Ludlow A. Battershall, and he did thereupon depose, testify, and say as follows, viz:

I reside at Troy, New York, a distance of more than one hundred miles from Milwaukee Wisconsin.

I know Albert C. Gunnison. I think I remember of an interview with Mr. Russell Sage, in company with Mr. Gunnison, in which interview I indorsed over to him, Gunnison, a certificate or certificates of stock in the Milwaukee and Minnesota Railroad Company for 400 shares.

I think the stock was put in my name at the first instance without my knowledge. I think at that time I was the owner and holder of 3d mortgaged bonds of the La Crosse and Milwaukee Railroad Company. A part of those bonds I obtained of Mr. Gunnison, the rest I do not recollect of whom I obtained them, I might have got all of them from Mr. Gunnison.

I had no interest in the bonds which were exchanged for the stock I transferred to Gunnison. I don't remember that I ever had in my possession the bonds upon which the stock was transferred to Gunnison. I would not say positively that those bonds were ever in my possession; if they were, they were furnished me by Mr. Gunnison, and I paid him no consideration therefor. I think Mr. Gunnison paid the assessment on the stock.

I have no recollection of myself surrendering 3d mortgage bonds for this stock. I think this stock was assigned by me in blank. Gunnison might have spoken to me before I assigned the stock to him about the same. For this particular assignment for this particular stock Gunnison paid me nothing, and I do not think that I had any interest whatever in the stock.

In any connexion in which my name appears as to the stock which I

transferred to Gunnison, it was entirely for his (Gunnison's) interest, and not for my own.

The bonds that I owned had no connexion with this stock which I transferred to Gunnison. No part of the bonds owned by me went into this stock which I transferred to Gunnison.

L. A. BATTERSHALL.

Subscribed and sworn to before me this 25th day of August, A. D. 1864.

JOHN A. OSBORN, *U. S. Com.*

[5 cent rev. stamp, cancelled.]

98 UNITED STATES OF AMERICA, *Southern district of New York:*

I, *I*, John A. Osborn, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled, "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the witness is material and necessary in the cause in the caption of the said deposition named, and that he resides or lives a greater distance from the place of trial of the above cause than one hundred miles. I further certify that no notification of the time and place of taking the said deposition, signed by me, was made out and served on the adverse party, his agent or attorney, to be present at the taking of the said deposition, and to put interrogatories, if he or they might think fit, because neither the adverse party, his agent, or attorney, were within one hundred miles of the place where this deposition was taken. I further certify that on the twenty-fifth day of August, in the year of our Lord one thousand eight hundred and sixty-four, I was attended by the proctor for the complainants and by the witness, who was of sound mind and lawful age, and the witness was by me first carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing in the presence of the witness, and from h s
99 statement, and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of sealing up and directing it to the court for which the same was taken. And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof, I have hereunto set my hand and seal, this twenty-fifth day of August, in the year of our Lord one thousand

eight hundred and sixty-four, and of the independence of the United States the eighty-ninth.

[L. S.] JOHN A. OSBORN, *United States Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.*

[5 cent revenue stamp, cancelled.]

100 UNITED STATES OF AMERICA, *Southern district of New York, City, county and State of New York, ss:*

Be it remembered, that on this twenty-fifth day of August, in the year of our Lord one thousand eight hundred and sixty-four, I, John A. Osborn, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office at 41 Chambers st., in the city of New York, in the said southern district of New York, in the State aforesaid, Alfred Noxon, to testify and the truth to say, on the part and behalf of the complainants, in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States for the district of Wisconsin, at Milwaukee, wherein Frederick P. James, Abram M. Brewer, E. Bradford Greenleaf, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, and J. Howard Mitchell are complainants ag'st Milwaukee and Minnesota R. R. Company, La Crosse and Milwaukee R. R. Company, and Selah Chamberlain, def'ts.

101 And the said Alfred Noxon, being about the age of forty-nine years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Alfred Noxon, and he did thereupon depose, testify, and say as follows, viz:

I reside at Crescent, Saratoga county, New York State, more than one hundred miles from Milwaukee, State of Wisconsin. I was a director in the La Crosse and Milwaukee Railroad Company from November, 1857, to May, 1858, and then subsequently elected a director after an interval of a few months, and from the time of that election I was a director till after the sale of the road under the Barnes mortgage. I know of the board of directors authorizing a note of $20,000 to be given to Selah Chamberlain for balance due him on a contract due him from the company. This contract was to build a piece of road, for which the company was to give Mr. Cham-

berlain $1,500,000 land-grant bonds in payment for the same. Chamberlain consented to accept of and carry out the contract on condition that the company, or some of its friends, would guarantee to him at least 30 per cent. on the par value of said bonds. Seth. R. Foster, this deponent, and some other individual, consented to be such guarantors. The bonds failed to produce the amount by about $20,000, and the note was given for that amount. The parties became the guarantors at the request of the company. That note was not paid at maturity. I understood that the note, together with the bonds, were left by Chamberlain with Meigs and Greenleaf for collection. I don't know of my own knowledge what became of the $400,000 bonds given to Chamberlain as collateral security to said note.

Ques. Do you know from the statements of any agents, officer, or director of the La Crosse Railroad Company how or in what manner the said $400,000 of bonds were disposed of, or what became of them, or any of them?

Ans. I have been told by A. C. Gunnison and others of the then directors that they, with some of their friends, had taken them at a price which would pay principal and interest of the note. This statement was made to me by A. C. Gunnison and others about the time the bonds were taken from Meigs & Greenleaf.

Ques. Was the manner in which these bonds were disposed of subject to a great deal of conversation in the board or among the directors?

Ans. I remember but one conversation in the board on the subject. This was about the time of the maturity of the note.

Ques. Where did this conversation and discussion of the board take place?

102 Ans. At the La Farge House, in New York City.

Ques. What was the point discussed by the board at this time in relation to these bonds?

Ans. The desire of the company to pay Mr. Chamberlain and take up the bonds, and the inability of the company to do it.

Ques. What plan was proposed or discussed by the board at this time to prevent a sacrifice of the bonds?

Ans. It was concluded that we as a company had not the power or means to take them up, but that if any of the individual members felt disposed to take them up they could do so.

Ques. What effort did the board of directors make to prevent the sale of the bonds?

Ans. I know of none except an effort to induce Mr. Chamberlain to hold his paper and take the amount from the receipts of the road.

Ques. At this meeting of the board of directors did any of the directors propose or offer to make the effort to secure a loan upon the faith of the bonds, or to advance through themselves or their friends the amount due on the note?

Ans. I think none proposed to make an effort to borrow the money, but some of the directors did propose to advance a portion of

the amount in the purchase of the bonds in order to pay Chamberlain, in case the bonds were to be sold.

Ques. Why was not this proposition accepted by the board at this time?

Question withdrawn.

Ques. What actual steps to prevent the sacrifice of those bonds by sale were taken by the board of directors?

Ans. None.

Ques. Who became subsequently to the sale the owner of these $400,000 bonds, or any of them? If you know by the statements of any officer or director of the railroad company, state who that officer or director is, and what he said as to the ownership of the bonds.

Ans. From my own absolute knowledge I know nothing as to who became the owners of these bonds, but I have been told by A. C. Gunnison, William Platt, and A. S. Bright that they purchased some of the 3d mortgage bonds sold by Meigs & Greenleaf.

Ques. Did you ever own any of the 3d mortgage bonds so-called? If yea, from whom did you obtain said bonds, and what price did you pay therefor, and how and in what manner paid?

Ans. I did own some. I obtained about $27,000 of them from the company, or its committee, by funding coupons and other indebtedness against the company. For a portion of these I paid par, and the other portion I paid 70 cents on the dollar. I obtained $75,000 of them by paying a note of Roscius R. Kennedy for $3,750
103 and interest, for which the said bonds were held as collateral.

I purchased from Seth R. Foster some, I don't know how many, and paid 10 cents on the dollar. I purchased $30,000 more from Gerge W. Luther at the same rate. I may have owned others, but don't remember. This George W. Luther I refer to was at one time a director of the La Crosse and Milwaukee Railroad Company.

Ques. What was the arrangement, and with whom made, by which you took up the note of Kennedy?

Ans. The note was held by the Bank of the Capitol, of Albany, and Mr. Kennedy gave me authority to pay the note and take up the bonds.

Ques. From whom did the Bank of the Capitol procure the bonds?

Ans. I don't know.

Ques. Do you know J. M. Gilbert?

Ans. I do. Gilbert's business in 1858 and '59 was a lawyer. I do not know of his being the owner of the 3d mortgage bonds. I don't know that Kennedy delivered any of the 3d mortgage bonds to Mr. Gilbert; don't know what Mr. Kennedy paid for the bonds, but my impression is he gave his note for the purchase-money, and I took up the note and took the bonds. Mr. Kennedy was a farmer and capitalist at this time. He resided at Clifton Park, New York. He has acted for me at times, for specific matters frequently, but not as agent as I understand it. I have frequently asked him to act in special matters for me, and he has done so.

Ques. Do you know from whom Mr. Kennedy received the bonds you obtained from him?

Ans. No; but think he obtained them through H. G. Gilbert.

Ques. Did you at any time enter into any arrangement with any party by which that party was to procure for your benefit any of the 3d mortgage bonds, so called?

Ans. I did not.

Ques. Was the purchase by you of the bonds from Kennedy in pursuance of any arrangements made for and on your behalf by any party or parties?

Ans. It was not.

Ques. State how you came to purchase the bonds from Kennedy at the time, and to pay for them in the manner you did.

Ans. I did it with view of becoming the owner of a majority of all the bonds or the stock into which the bonds were convertible.

Ques. Did you know of a loan having been made of one Horatio G. Gilbert of the sum of $7,500, or thereabouts, by the La Crosse company or its president?

Ans. I know only by hearsay.

104 Ques. From whom have you heard the fact?

Ans. I think I heard it from Mr. Stanton, the then president, and from Mr. Gilbert himself.

Ques. Do you know, or have you heard by the statements of Mr. Stanton, president, that any of the 3d mortgage bonds, so called, was put up as collateral security to that note?

Ans. I think I have heard it from Mr. Stanton. I don't mean to say that the amount of the note was the amount as stated, $7,500. I don't know whether that note was paid at maturity or not; do not know whether the bonds to secure the payment of that note were sold at public sale. I don't know whether these bonds were offered at either private or public sale. Do not know that there were any funds in the hands of the company at the time of the maturity of this note. Do not know what amount of bonds were issued to Barnes under the 3d mortgage, nor do I know the amount paid Barnes for his compensation as trustee.

Ques. Do you know by the statements of any one of the directors of the La Crosse and Milwaukee Railroad Company, or otherwise, that the bonds given to Chamberlain were divided up without being sold at public sale?

Ans. I have understood from parties interest, but who I cannot now remember, that they were offered for sale, and no bids being made, they were then sold at private sale; Gunnison, Bright, Platt, and others taking them at about 5 per cent. on the dollar.

Ques. Were any of the bonds which you received a part of this lot of bonds?

Ans. I don't know.

Ques. Did any of the directors at the meeting at the La Farge House express the desire or wish that the bonds issued to Chamberlain should be sold?

Ans. I think not.

Ques. Was the money advanced for the taking up the note mostly or wholly money of the directors or their friends?

Ans. From information and belief I think it was.

Ques. Did you advance at that time any money to any party, or did you agree with any party that did or should advance money to take up that note, to repay the amount so advanced or any part of it?

Ans. I think not.

Ques. Did you have any understanding or agreement with Kennedy that you would take up his note at maturity and release him from its payment and take the bonds?

Ans. I think not.

Ques. Did you advise Kennedy to purchase those bonds?

105 Ans. I think not. Kennedy counselled and advised with me about the purchase of those bonds before he purchased them. At the time of this interview with Kennedy I told him that there was a chance for him to make a good deal or lose a little, and if I was not a director I would take the chance, but as I was situated I couldn't do it. After I procured the bonds of Kennedy I converted them into stock.

A. NOXON.

Subscribed and sworn to before me this 25th day of August, A. D. 1864.

JOHN A. OSBORNE, *U. S. Com'r.*

[5 ct. revenue stamp, cancelled.]

UNITED STATES OF AMERICA, *Southern district of New York, ss:*

I, John A. Osborn, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the witness is material and necessary in the cause in the caption of the said deposition named, and that he resides or lives a greater distance from the place of trial of the above cause than one hundred miles. I further certify that no notification of the time and place of taking the said deposition signed by me was made out and served on the adverse party, his agent, or attorney, to be present at the taking of the said deposition and to put interrogatories, if he or they might think fit, because neither the adverse party, his agent, or attorney, were within one hundred miles

106 of the place where this deposition was taken.

I further certify that on the twenty-fifth day of August, in the year of our Lord one thousand eight hundred and sixty-four, I was attended by the proctor for the complainants and by the witness, who was of sound mind and lawful age, and the witness was by me first carefully examined and cautioned and sworn to testify the truth,

the whole truth, and nothing but the truth, and the deposition was by me reduced to writing in the presence of the witness and from his statement, and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of sealing up and directing it to the court for which the same was taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof, I have hereunto set my hand and seal this twenty-fifth day of August, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the United States the eighty-ninth.

[SEAL.] JOHN A. OSBORN, *United States Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.*

[5 ct. revenue stamp, cancelled.]

108 UNITED STATES OF AMERICA, *Southern district of New York. City, county and State of New York, ss:*

Be it remembered that on this twenty-third day of August, in the year one thousand eight hundred and sixty-four, I, John A. Osborn, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause personally to appear before me, at my office at 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, William A. Guest, to testify and the truth to say, on the part of the complainants, in a certain suit or matter of controversy depending in the circuit court of the United States for the district of Wisconsin, at Milwaukee, wherein Frederic P. James, Abram M. Brewer, E. Bradford Greenleaf, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, and J. Howard Mitchell are complainants, and Milwaukee and Minnesota Railroad Company, La Crosse and Milwaukee Railroad Company, and Selah Chamberlain, defendants.

109 *Deposition of William A. Guest.*

William A. Guest, being about the age of fifty years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said William A. Guest, and he did thereupon depose, testify, and say as follows, viz :

I reside in New York city, and more than one hundred miles from the city of Milwaukee. I know Selah Chamberlain. I recollect the fact of the La Crosse and Milwaukee R. R. Company executing to Selah Chamberlain a note of $20,000. The consideration was that Selah Chamberlain should advance that amount of money to pay off incumbrances on the depot ground of the railroad company at Milwaukee. My impression is that there was $400,000 of the bonds secured by the Barnes mortgage of the railroad company put up as collateral security for that note. I do not know of my own knowledge that Mr. Chamberlain advanced the $20,000. I cannot tell whether the $20,000 note was paid at maturity. I cannot tell what became of the $400,000 bonds put up as collateral security. I have had in my possession bonds of that company known as the third mortgage bonds, from three hundred to five hundred thousand dollars, I think. These bonds were sent to me by the president, N. P. Stanton, or his representative. They were delivered to me about June or July in 1858; a large amount of those bonds were paid out by me for settlements of the indebetedness of the company, and the balance on hand delivered to the company.

I cannot remember the amount I delivered back to the company. Cannot give any idea of the amount delivered back to the company. I had a memorandum book showing the bonds I had disposed of, and the names of the parties to whom they disposed, and the amount of the bonds I returned to the company.

The memorandum book alluded to is an ordinary committee book. The president, director, or some person representing the company came and took that with other books. Can't now say how much of the amount of the bonds I paid out, or the name of the parties to whom I paid them. I did not sell any of these bonds, to my recollection, that belonged to the company.

I think the balance of the bonds before mentioned were returned to the company in the latter part of 1858. I am quite certain those bonds were delivered to the president, Mr. Stanton.

I was at this time one of a committee of the board of directors of the R. R. company, of which Alfred Noxon and Albert C. Gunnison were also members. I became myself an owner of the third mortgage bonds of that company as a buyer and seller. It would be almost impossible for me to say from whom I purchased these bonds, as I made it a business to buy and sell them.

I never, to my recollection, purchased any of those third mortgage bonds of Albert C. Gunnison. I cannot say that Mr. Gunnison ever held any of those third mortgages bonds as owner of them, to my knowledge. Mr. Gunnison has purchased third mortgage bonds of that company from me, that is, I have delivered to him third mortgage bonds. I could not say what amount of those bonds I delivered to Mr. Gunnison, not a large amount, however. I was at one time the owner and holder of $20,000 of the third mortgage bonds. I think that was in 1858 or 1859.

I don't remember what I paid for those bonds. I recollect of paying money for those $20,000 bonds. I paid over five cents on the

dollars in money for those $20,000 bonds. I think there was a small commission or small brokerage over the five cents on the dollar. The commission would not amount to over ½ to ¾ per cent. Don't think it was over ¼ per cent.

I cannot not tell from whom I purchased these bonds. I purchased them through a broker, Joseph O'Brien, at No. 29 Wall street then, and now at No. 33 Wall st. Mr. O'Brien did not state to me whose bonds they were. I received, I think, $20,000 or thereabouts of third mortgage bonds in exchange for other bonds of the company. I cannot tell what the bonds given in exchange were, or by what name or title they bore, except that they were La Crosse and Milwaukee R. R. bonds. Can't tell what I paid for the bonds thus exchanged. This last $20,000 I have spoken of is in addition to what I have before spoken of. There was also $10,000 received by me to be exchanged, which amount was exchanged for a like sum of bonds of the company. One of the parties' name was Clark, and the other Bonner. The character of the indebtedness was other unsecured bonds of the company; what these other unsecured bonds were I cannot tell.

I could not tell whether they belonged to the Barstow bonds or any other name; don't remember. My impression is that the first $20,000 bonds that I purchased with the money came from Meigs & Greenleaf. They were brokers then and doing business in Exchange Place. I was told that these bonds were deposited with Meigs & Greenleaf, but who told me I cannot remember. I did not know the fact that Meigs & Greenleaf were the brokers and bankers of Selah Chamberlain. I do not know of my own knowledge that the $20,000 note executed by La Crosse and Milwaukee R. R. Company to Selah Chamberlain was deposited with or held by Meigs & Greenleaf at the time I purchased the $20,000 bonds for myself. I did not know the fact at any time prior or subsequent, that Meigs & Greenleaf held the $20,000 note mentioned. I was a director in the La Crosse and Milwaukee R. R. Company a portion of the year 1858. Elected a director about the month of June, 1858. I, as one of the directors, voted for the execution of the $20,000 note to Chamberlain. Don't remember that I voted or assented to the putting up the $400,000 of the so-called third mortgage bonds as collateral security to that said note.

Ques. Did you, as a director or officer of that company, know the fact that $400,000 of the so-called third mortgage bonds had actually been put up as collateral security to the $20,000 note executed to Chamberlain?

Ans. My impression is that amount was put up, but am not certain about it.

Ques. State what efforts, if any, you, as a director or officer of the company, took to secure the payment of the $20,000 note to Chamberlain.

Ans. I do not remember.

111 Q. Do you recollect of you yourself making any proposition to the board of directors to advance any proportion of money to raise the note or procure an extension of the time of payment?

A. Have no recollection of it whatever.

Q. State whether you did, as a director or officer of the company, make any effort whatever to take up the note, or to procure an extension of time?

A. I do not remember anything about it. I do not know the fact that the $400,000 bonds were sold; don't know what became of them; never heard that those $400,000 bonds were advertised for sale; have no recollection about it. When I speak of the so-called 3d mortgage bonds, I mean the bonds secured by the mortgage in which William Barnes is the trustee.

This evidence is all given to the best of my recollection and knowledge.

WM. A. GUEST.

Subscribed and sworn to before me this 23d day of August, 1864.

JOHN A. OSBORN, *U. S. Com'r.*

[5 c't revenue stamp, cancelled.]

112 UNITED STATES OF AMERICA, *Southern district of New York, ss:*

I, John A. Osborn, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing disposition is, and the fact is, that the witness is material and necessary in the cause in the caption of said deposition named, and that he resides or lives at a greater distance from the place of trial of the above cause than one hundred miles.

I further certify that no notification of the time and place of taking said deposition signed by me was made out and served on the adverse party, his agent, or attorney, to be present at the taking of the deposition, and to put interrogatories, if he or they might think fit, because neither the adverse party, his agent, or attorney were within one hundred miles of the place where this deposition was taken.

I further certify that, on the twenty-third day of August, in the year of our Lord one thousand eight hundred and sixty-four, I was attended by the proctor for the complainants, and by the said witness, who was of sound mind and lawful age, and the said witness was by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing, in the presence of the said witness, and from his statement, and after carefully reading the same to said witness, he subscribed the same in my presence. I have retained

the said deposition in my possession for the purpose of sealing up and directing it to the court for which the same was taken; and I do further certify that I am not of counsel nor attorney for either of the parties in said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof, I have hereunto set my hand this twenty-third day of August, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the United States the eighty-ninth.

[L. S.] JOHN A. OSBORN, *United States Commissioner, duly appointed by the Circuit Court of the United States for the southern district of New York, in the Second Circuit.*

[5 c't revenue stamp, cancelled.]

113 UNITED STATES OF AMERICA, *Southern district of New York, City, county and State of New York, ss:*

Be it remembered that, on this twenty first day of August, in the year one thousand eight hundred and sixty-four, I, John A. Osborn, commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause personally to appear before me, at my office at 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, Russell Sage to testify and the truth to say, on the part of the complainants, in a certain suit or matter of controversy depending in the circuit court of the United States for the district of Wisconsin, at Milwaukee, wherein Frederic P. James, Abram M. Brewer, E. Bradford Greenleaf, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, and J. Howard Mitchell are complainants, and Milwaukee and Minnesota Railroad Company, La Crosse and Milwaukee Railroad Company, and Selah Chamberlain are defendants.

114 And the said Russel Sage, being about the age of forty-eight years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Russel Sage, and he did thereupon depose, testify, and say as follows, viz :

I reside in the city of New York, a distance of over one thousand miles from the city of Milwaukee, State of Wisconsin; the defendant, Milwaukee and Minnesota Railroad Company, has not an attorney in the city of New York, where this deposition is being taken, nor within one hundred miles of the city of New York, to my knowledge.

I knew Edwin C. Litchfield; the said Litchfield, on or about the third day of May, 1859, assigned to me a certain judgment recovered by him in the district court of the United States for the district of Wisconsin, on or about the 5th day of October, 1858; I purchased from the said Litchfield the said judgment, and paid for it; it was paid for with my own means; it was not bought by me for or on account of the Milwaukee and Minnesota Railroad Company; I have a copy of the assignment of the said judgment, and now produce it to the commissioner. Said copy offered in evidence, marked Exhibit A. J. A. O.

I have looked for the original of that assignment and have been unable to find it; the original was in my possession; I know Ex. A, J. A. O. to be a true copy; I subsequently sold the said judgment to F. P. James and company, which company was composed of Frederic P. James and Abram M. Brewer.

The counsel for the complainants now produces a paper marked Ex. B, J. A. O., "by the commissioner;" and the witness says that the signature to that paper is the signature of the deponent; I delivered that paper to F. P. James & Co.; I know of a certain mortgage to have been executed by the La Crosse and Milwaukee Railroad Company to William Barnes, trustee, bearing date June 21st, 1858, and a supplemental, bearing date August 11th, 1858, or about those dates, for the sum of two million dollars; there were one hundred and sixty-five thousand dollars of bonds issued by the La Crosse and Milwaukee Railroad Company, and secured by the above mortgage and supplemental mortgage to me, in trust, for paying certain debts against said La Crosse and Milwaukee Railroad Company.

My recollection is that the time for using those bonds for the payment of said debts was limited; there were sixty-one thousand and seven hundred of said bonds used by me in pursuance of the trust in settlement of said debts or claims of said company, and leaving one hundred and three thousand and three hundred of said bonds so received, unused, which were subsequently cancelled; these last
115 bonds were never subsequently used so as to become a legal obligation against the La Crosse and Minnesota Railroad Company.

The bonds delivered to me in trust, above stated, were part of the two million bonds issued under the so-called Barnes mortgage; I was in Milwaukee in the month of May, 1859; on the 21st of May, 1859, I was present at the pretended sale made in Milwaukee by Barnes as trustee, under and by virtue of the alleged mortgage and supplemental mortgage; I was present when the property was struck off under that sale by said Barnes, he acting as auctioneer, for the sum of one million five hundred and ninety-three thousand and three hundred and thirty-three dollars and thirty-three cents, that being 75 cents on the dollar of the said $2.000,000 bonds so issued, and the interest on the same from the 1st day of July, 1858; there was no other bid made at said pretended sale; there was no money paid on said bid; he offered the property but did not cry the sale for a longer time than from three to five minutes, and struck the property off to himself; prior to

that date injunctions had been granted enjoining said Barnes from making said sales, and sales had been adjourned at two different times on account of said injunctions; at the time of this pretended sale said Barnes seemed excited, and was apprehensive that other injunctions would be served upon him, and the sale was hurried through. After the sale a demand was made by a bondholder upon Barnes for his proportion of the money, which he (bondholder) supposed had been realized upon the sale, but Barnes declined to pay him; but fearing that there might be trouble by reason of his bid at the sale, he hurriedly left Milwaukee and the State of Wisconsin, and has not since been in that State to my knowledge.

After the sale by Barnes before mentioned, I was appointed president of the Milwaukee and Minnesota Railroad Company which claimed to be organized under the Barnes sale; I was authorized by the board of directors to issue stock of said company in exchange for bonds which had been issued by La Crosse and Milwaukee Railroad Company.

I think I was acting as president of that company about two years; during that time there were one million and between one and two hundred thousand dollars of bonds exchanged for stock of said Milwaukee and Minnesota Railroad Company. Among others who presented bonds to be exchanged for the stock was one L. A. Battershall, accompanied by Albert C. Gunnison, who presented forty thousand dollars of bonds in exchange for stock, that amount of bonds having been used in the organization of said company by said Buttershall, who had given me power of attorney to subscribe his name to the articles of the association of the said Milwaukee and Minnesota Railroad Company.

116 At the time those two parties appeared to exchange these bonds for stock, Battershall said that he had allowed Gunnison to use his name as the owner of the bonds, but that he (Battershall(had no interest in them; Gunnison said that they were a part of the Chamberlain lot of bonds, so called, which had previously been sold in New York at about five cents on a dollar; I issued the stock in the name of L. A. Battershall in pursuance of his authority given to me, and said Battershall, after receiving the scrip for said stock, assigned it over in blank and delivered the same to said Gunnison; said Gunnison paying the assessment of one per cent. on said stock, which was to go towards paying the expenses of the foreclosure of the Barnes mortgage and the organization of the said Milwaukee and Minnesota Company.

This was all said and done at the time they appeared with the bonds and demanded the stock in exchange; at the time of this conversation, it was the first knowledge or intimation I had of the ownership of these bonds by Gunnison; prior to this I had supposed that Battershall was the true and bona fide owner, and had used his power of attorney under such impression.

Ques. Do you know of any other parties who were or had been directors or officers of the La Crosse and Milwaukee Railroad Company, who presented bonds to secure the payment of which the Barnes mortgage was executed, or who negotiated for the conversion of

bonds into stock of the Milwaukee and Minnesota Railroad Company? If yea, state the name or names of such directors or officers.

Ans. William Platt, director and vice-president of the said La Crosse and Milwaukee Railroad Company, negotiated for the conversion of $50,000 of said bonds into the stock of the Milwaukee and Minnesota Railroad Company, and at the time of the conversion of said bonds into stock he said that he had taken $100,000 of the La Crosse and Milwaukee Railroad Company bonds at the sale of the Selah Chamberlain lot of $400,000, and that he had agreed with one Aaron S. Bright to let him (Bright) have $50,000 of said $100,000 at cost, which was 5 cents on the dollar and brokerage, on condition that he (Bright) should secure a loan for said Platt sufficient to pay for the other $50,000 at the rate of 5 cents on the dollars and brokerage; the stock, at the request of Platt, was issued, I think, to John H. White, said Platt paying the assessment of one per cent. to pay the expense of the foreclosure. Said Platt also stated that the reason why he wanted the stock to run to White was, as White had made him a loan on said bonds at the rate of about five cents or under, on the dollar, and White held said bonds as collateral to the same. This was all said and done while Platt was endeavoring to negotiate the conversion of the bonds into stock.

Also Alfred Noxon, who was a director in the La Crosse and Milwaukee Railroad Company, negotiated for the conversion of
117 $75,000 of the bonds under the Barnes mortgage in the name of Roscius R. Kennedy, and paid the one per cent. assessment towards defraying expenses of foreclosure of sale and organization of the company, and I understood said Noxon to state that said $75,000 was a part of the said Chamberlain lot of $400,000 as before stated.

I was present at a meeting of the board of directors of the La Crosse and Milwaukee Railroad Company, at Albany, New York, in the latter part of November, 1858, and then heard for the first time of the hypothecation of the $400,000 of third mortgage bonds to Selah Chamberlain, as collateral security to the note of $20,000; the question was then discussed by the board as to the sale of said $400,000 bonds, which was to take place the next day in the city of New York.

I advised the board to contribute to pay the face of the note, and thus prevent the sacrificing of the bonds, and offered to advance half of the amount due on said note and take a proportional amount of the bonds as collateral to my advance, and urged the directors to advance the balance, which they were abundantly able to do. The reason why I was anxious to procure a postponement of that sale and prevent a sacrifice of the bonds, was that I had been prevailed upon to accept some of the 3d mortgage bonds in satisfaction of a judgment I had obtained against the railroad company, and to prevent a depreciation of the value of the bonds in market; the 3d mortgage bonds have never to my knowledge been on the stock board for sale in Wall street, New York.

The stock of the Milwaukee and Minnesota Railroad Company has not been on the stock market board for sale, and the stock has been

so far as I know, only dealt in between private parties, and at nominal or very low rates.

The stock of that company has generally ranged among private parties at about 5 cents on the dollar; there may have been some lots sold in advance of that sum, while others have sold as low as $2\frac{7}{8}$ and $3\frac{1}{4}$.

RUSSELL SAGE.

Subscribed and sworn to before me this 28th day of August, 1864.
JOHN A. OSBORNE, *U. S. Com.*

[5 cent rev. stamp, cancelled.]

118 *Exhibit A.—Copy.*

NEW YORK, *May 3d*, 1859.

This agreement, made this 3d day of May, 1859, between Edwin C. Litchfield and Russell Sage, witnesseth:

Whereas the said Litchfield is the owner of a certain judgment obtained in the United States district court for the State of Wisconsin, in his favor, against the La Crosse and Milwaukee Railroad Company, for $26,332 75 damages, and $20 76 costs, which judgment was entered 5th October, A. D. 1858; and whereas certain proceedings subsequent to the obtaining of such judgment have been instituted by Messrs. Buttrick and Cottrill, of Milwaukee, as attorneys of said Litchfield, and a bill filed and injunction obtained thereon, to prevent the sale of the road of the said La Crosse and Milwaukee Railroad Company; and whereas the said Russell Sage has for himself, and also represents for other parties a large amount of bonds known as the third mortgage bonds of said La Crosse and Milwaukee Railroad Company, and the bondholders aforesaid, including said Sage, have heretofore instituted proceedings to obtain a sale of said road under and by virtue of a foreclosure of said third mortgage, which sale has been prevented by the injunction aforesaid; and whereas said Sage has applied to said Litchfield, and has informed him that he and other creditors similarly situated with said Litchfield, in relation to the kind of debts and securities which they held against said La Crosse and Milwaukee Railroad Company, have agreed to accept in payment and satisfaction of their debts the third mortgage bonds of said company at par, and it is proposed that whenever a sale of said road shall be effected under such foreclosure, the said third mortgage bonds shall be converted into and represented at par as stock in a new company, consisting of such bondholders, under the third mortgage, and said Sage has proposed to said Litchfield to unite his claim with the claim of said Sage, and of the other parties represented by him, so that it shall in all respects share equally with such other claims in proportion to the amount thereof, in any benefit or advantage to be derived under such sale:

Now therefore, in consideration of the promises and of the covenants and agreements by said Sage herein made, the said Litchfield does hereby sell and assign said judgment and all advantages and benefits thereof to said Sage, and the said Sage does hereby, in consid-

eration thereof, agree to deliver to said Litchfield within one year from this date, third mortgage bonds of said company with unpaid coupons attached, to an amount equal to the principal due on said judgment at the time of said delivery, or in case said road is sold under said third mortgage, and the third mortgage bonds are converted into stock in the new company, then said Sage agrees
119 to deliver to said Litchfield new stock in said new company, equal at least to the amount of said judgment and interest, it being agreed that said judgment shall in all respects be paid as well in kind and in amount, as any equal amount of the debts now or heretofore held by said Sage against said company, in respect of three notes for $25,000 each, made by said company and indorsed by the Watertown and Madison Railroad Company. It is further agreed that said Sage shall pay to Messrs. Butler, Buttrick and Cottrill, of Milwaukee, any claims they have against said Litchfield, for costs or services subsequent to the recovery of any judgment in his favor against either of said companies; also that in case no sale is effected under a foreclosure of said third mortgage, within one year from this date, said Sage shall reassign said judgment to said Litchfield, if he shall request it, upon receiving a return of any bonds delivered to him on account thereof, or a cancellation of this agreement. And it is further agreed that in case of any sale being effected under said third mortgage, this contract shall be closed up, and bonds or stock delivered to said Litchfield as above provided, within sixty days after such sale shall take place. In case any further proceedings are had under said judgment, whereby said Litchfield should be made in any way liable for costs or claims to any person, the said Sage does hereby agree to indemnify and save harmless the said Litchfield, of, from, and against the same.

In witness whereof, the parties hereto have hereto signed this agreement the day and year first above written.

RUSSELL SAGE.
EDWIN C. LITCHFIELD.

Signed and delivered in the presence of—
CLIFFORD C. PEARSON.

The $25,000 of bonds mentioned in the above agreement have been this day delivered to me by Mr. Sage.

New York, 21st Dec., 1859.

EDWIN C. LITCHFIELD.

In consideration of one dollar, and of the agreement of F. P. James & Co., I hereby sell and assign to said F. P. James & Co., a judgment recovered in the district court of the United States for the district of Wisconsin, October 5th, 1858, by Edwin C. Litchfield against the La Crosse and Milwaukee Railroad Company, of $27,353 51, which judgment was duly assigned by said Litchfield to me the 3rd day of May, 1859.

RUSSELL SAGE.

New York, April 14, 1863.

120 UNITED STATES OF AMERICA, *Southern district of New York, ss:*

I, John A. Osborn, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the witness is material and necessary in the cause in the caption of said deposition named, and that he resides or lives at a greater distance from the place of trial of the above cause than one hundred miles.

I further certify that no notification of the time and place of taking said deposition signed by me, was made out and served on the adverse party, his agent or attorney, to be present at the taking of the deposition and to put interrogatories, if he or they might think fit, because neither the adverse party, his agent or attorney, were within one hundred miles of the place where this deposition was taken.

I further certify that on the twenty-first day of August, in the year of our Lord one thousand eight hundred and sixty-four, I was attended by the proctor for the complainants and by the said witness, who was of sound mind and lawful age, and the said witness was by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing in the presence of the said witness and from his statement, and after carefully reading the same to said witness, subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of sealing up and directing it to the court for which the same was taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof, I have herunto set my hand this twenty-third day of August, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the United States the eighty-ninth.

[L. S.] JOHN A. OSBORN,
United States Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

[5 ct. rev. stamp, cancelled.]

121 UNITED STATES OF AMERICA, *Southern district of New York, ss:*

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, second cir-

cuit, do hereby certify that I am well acquainted with the handwriting of John A. Osborn, whose name is subscribed to the annexed deposition and certificate, and that the signature to the same is in his proper handwriting. And I do further certify that he was at the time of signing the same a United States commissioner, duly appointed by the circuit court of the United States of America for the southern district of New York, second circuit.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said circuit court this 27th day of August, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of these United States the eighty-ninth.

[L. S.] KENNETH G. WHITE, *Clerk.*

[5 ct. rev. stamp, cancelled.]

122 UNITED STATES OF AMERICA, *Southern district of New York, City, county, and State of New York, ss:*

Be it remembered, that on this twenty-fourth day of August, in the year one thousand eight hundred and sixty-four, I, John A. Osborn, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause personally to appear before me, at my office, at 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, William Platt, to testify and the truth to say on the part of the complainants in a certain cause depending in the circuit court of the United States for the district of Wisconsin, at Milwaukee, wherein Frederic P. James, Abram M. Brewer, E. Bradford Greenleaf, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, and J. Howard Mitchell are complainants *vs.* Milwaukee and Minnesota R. R. Company, La Crosse and Milwaukee R. R. Company, and Selah Chamberlain, defendants. And the said William Platt, being about the age of fifty-six years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, I carefully examined the said William Platt, and he did thereupon depose, say, and testify as follows, to wit:

I reside in the village of Lansingburg, Renselear county, New York, more than one hundred miles from Milwaukee, Wisconsin; I know the defendant in this suit, Selah Chamberlain. I have heard the fact repeatedly of the La Crosse and Milwaukee Railroad Company executing a note to Selah Chamberlain. I don't know what the consideration of that note was other than reports from hearing; I don't know of my own personal knowledge that the so-called 3d

mortgage bonds of the La Crosse and Milwaukee Railroad Company were given as collateral security; I don't know that I can give even the year—but I think in 1858—that this said note was executed. I was a director of the La Crosse and Milwaukee Railroad Company,
I think, in September, 1858. J. H. Shears resigned, and I
123 was elected in his place. At the time of my election the note spoken of and the third mortgage bonds as collateral security had been executed. When I speak of having heard of the execution of the note to Chamberlain and the delivery of the bonds as collateral thereto, I mean to say that I heard it from the co-directors. The note and the bonds were frequently alluded to by the directors of the company.

I understood from different directors that the consideration of that note was money which Mr. Chamberlain had advanced to lift incumbrances on real estate belonging to the company, but I had no actual knowledge of the consideration. I understand that that note was not paid at maturity by the company. I do not know of my own personal knowledge what became of the bonds put up as collateral security; don't know whether the bonds were ever advertised or sold; don't know that I ever heard any of the directors say that the bonds were ever advertised, but I have heard some of the directors and Mr. Chamberlain say that the bonds were offered for sale, but did not obtain a bid. I could not name particularly any one of the directors who told me, yet I think I have heard nearly all of them say so. I understood then and understand now that after the bonds had been put up and there was no bid or offer for them, parties contributed the amount to pay the note, and divided up the bonds pro rata in proportion to the amount to which they contributed; one Aaron S. Bright contributed, I think, $\frac{1}{4}$ of the amount, which, if that was the amount he contributed, would entitle him to $100,000 of the bonds. I have heard from Albert C. Gunnison, who was at the time he informed me a director of the company, that he (Gunnison) had contributed and took part of the bonds; my best recollection is that he told me this at or about the time of the transfer of the bonds. There was an arrangement made between Mr. Bright and myself by which he and I were to share equally in the bonds which he (Bright) took; the arrangement was that he (Bright) was to carry for six months the full amount, at the expiration of which time I was to pay for $\frac{1}{2}$ of them and he to keep the other half. I consummated the arrangements by
paying him, at the expiration of the time, about $26,000 or
125 $27,000, and I received from him, upon paying that amount, $50,000 of the bonds; I hypothecated them with a man by the name of Benjamin Allen, at 5 per cent. on the dollar, I think; that hypothecation was to secure a loan of money to myself; Allen negotiated another loan with them with one White; he negotiated them with White for about 5 per cent. on the dollar; this last hypothecation was made with my consent and at my request; it was made to carry on my loan with Allen. I did not subsequently apply to the Milwaukee and Minnesota Railroad Company to exchange these bonds for the stock or for certificate entitling me to stock. An application

was made to me by the then president, Russell Sage, of the Milwaukee and Minnesota Railroad Company to pay one per centum on the amount of $50,000 of the bonds so held by White, he agreeing upon payment of one per cent. to convert the bonds into stock at any time the said White might request him. I paid to him the one per cent. I have no distinct recollection of any other party aside from Bright obtaining of said bonds. I don't recollect anything more of being in New York the day before the bonds issued to Chamberlain were to be offered for sale, than the fact that I then resided in the city of New York. At one or more meetings of the directors at Albany, I recollect of the Chamberlain note with other matters being discussed by the board.

Ques. What did the board of directors do in relation to the Chamberlain note or the bonds put up to secure its payment?

Ans. The board discussed several plans, but had no means of liquidating the payment of the note except by disposing the 3d mortgage bonds of the road; that was all the available assets they had.

Ques. Do you know of any effort made by the board of directors, and if so what effort, to induce moneyed men to advance the amount due on the Chamberlain note, and take the $400,000 bonds as collateral security to such advance? If yea, state the name or names of the party or parties to whom such application was made.

Ans. I could not state the name or names of the party or parties to whom such application was made, but I understood that there was an unsuccessful application made to different parties; I understood this from different directors; among others, Alfred Noxon was one, and a man by the name of Luther, of Albany, was another, and I think also Mr. Gunnison; I think Mr. Guest was also another. I understood that this was done before the bonds were put up for sale. After the bonds had been put up for sale and there were no bids, there were parties who advanced the full amount of the note. I do not know of any one of my own knowledge, except Bright, who advanced money to take up the Chamberlain note. I have not a distinct recollection to enable me to swear positively as to any other party who advanced the money to take up the note to Chamberlain, but I have an impression that Alfred Noxon, A. C. Gunnison, and S. H. Alden may have advanced money to take up the said note.

I know by the statement of the directors, and also by the statement of Mr. Chamberlain, that the La Crosse and Milwaukee Railroad Company took up the note.

I don't know what became of the $50,000 of the bonds that remained in the hands of Bright.

126 I think that Bright did not pay more than 6 cents on the dollar for these bonds.

I do not know whether the stock has been actually issued on the $50,000 bonds which I obtained of Bright.

WM. PLATT.

Subscribed and sworn to before me this 24th day of August, A. D. 1864.

JOHN A. OSBORN, *U. S. Commissioner.*

[5 c't rev. stamp, cancelled.]

127 UNITED STATES OF AMERICA, *Southern district of New York, ss:*

I, John A. Osborn, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the witness is material and necessary in the cause in the caption of said deposition named, and that he resides or lives at a greater distance from the place of trial of the above cause than one hundred miles.

I further certify that no notification of the time and place of taking said deposition, signed by me, was made out and served on the adverse party, his agent or attorney, to be present at the taking of the deposition and to put interrogatories, if he or they might think fit; because neither the adverse party, his agent or attorney, were within one hundred miles of the place where this deposition was taken.

I further certify that on the twenty-fourth day of August, in the year of our Lord one thousand eight hundred and sixty-four, I was attended by the proctor for the complainants and by the said witness, who was of sound mind and lawful age, and the said witness was by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing in the presence of the said witness, and from his statement, and after carefully reading the same to said witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of sealing up and directing it to the court for which the same was taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof, I have hereunto set my hand this twenty-fourth day of August, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the United States the eighty-ninth.

[L. S.] JOHN A. OSBORN,
United States Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

[5 cent revenue stamp.]

128 UNITED STATES OF AMERICA, *Southern district of New York, City, county, and State of New York, ss:*

Be it remembered, that on this thirtieth day of August, in the year one thousand eight hundred and sixty-four, I, George F. Betts, a com-

missioner duly appointed by the circuit court of the United States for the southern district of New York, in the scond circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause personally to appear before me, at my office, at 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, Albert C. Gunnison, to testify and the truth to say on the part of the complainants in a certain suit or matter of controversy depending in the circuit court of the United States for the district of Wisconsin, at Milwaukee, wherein Frederic P. James, Abram M. Brewer, E. Bradford Greenleaf, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, and J. Howard Mitchell are complainants against the Milwaukee and Minnesota Railroad Company, the La Crosse and Milwaukee Railroad Company, and Selah Chamberlain, defendants.

129 *Deposition of Albert C. Gunnison.*

And the said Albert C. Gunnison being about the age of forty-one years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Albert C. Gunnison, and he did thereupon depose, testify, and say as follows, viz :

I reside in Brooklyn, State of New York, more than one hundred miles distant from Milwaukee, in the State of Wisconsin.

In some parts of the year 1858 I was a director in the La Crosse and Milwaukee Railroad Company, in the fall of 1858; I continued a director until the date of the sale under the Barnes mortgage; I don't think I was in the board at the time the Barnes mortgage was issued; at all events, I was not present when it was issued; I know the fact that a mortgage was issued by the La Crosse Railroad Company to Barnes to secure, I think, two millions of dollars in bonds; I can't tell when the first instalment of interest was due on those bonds.

Ques. Did you and your company directors, Guest, Noxon, Luther, and Shears, hold a meeting on or about the 15th day of June, 1858, at Albany, in the State of New York, and by resolution modify the bonds to be issued under the Barnes mortgage so that the first instalment of interest should be made payable on the first day of January, 1859?

Ans. I can't say whether I attended such a meeting or not; I have no recollection of such a meeting.

Ques. At that same meeting, by resolution of said directors, were you, William A. Guest, and Alfred Noxon appointed a committee to

sell, negotiate, or dispose of any part of the bonds issued by said railroad company and secured by said third mortgage?

Ans. We were appointed such a committee at some meeting, but when and where I don't know; I was not present at such meeting to the best of my recollection; I acted on that committee as one of it.

Ques. Did that committee for and on behalf of the railroad company execute, or cause to be executed, a promissory note to Selah Chamberlain for twenty thousand dollars.

Ans. Not to my knowledge.

Ques. Do you know the fact that a note for twenty thousand dollars was executed by said company to said Chamberlain?

Ans. I think such a note was executed.

Ques. State whether any, and if any and what, collateral security was given to said Chamberlain with said note?

Ans. I understand some of the Barnes mortgage bonds were given to him as collateral, but I didn't see them; I only know it from hearsay.

130 Ques. From whom did you learn the fact?

Ans. I can't name any particular individual.

Ques. Did you learn it from any of the directors of the La Crosse and Milwaukee Railroad Company?

Ans. I should hear it from them, if any one; shouldn't be likely to hear it from an outsider.

Ques. Can you not remember the name of the party or parties from whom you obtained knowledge of the fact?

Ans. My recollection is not distinct enough to give any names.

Ques. Was it from Mr. Guest, Noxon, or Shears, or either of them?

Ans. I couldn't say.

Ques. What amount of bonds were put up as collateral to that note?

Ans. My impression is $400,000; I didn't see the bonds nor count them; I can't speak of my own knowledge.

Ques. Was any part of that twenty thousand dollar note paid by the company?

Ans. Not that I am aware of.

Ques. Were all of the $400,000 bonds put up as collateral as aforesaid delivered to Chamberlain at the same time?

Ans. I can't say.

Ques. Do you know, either from your own knowledge or from statement of any officer or director of said railroad company, that five thousand dollars in cash was paid to Mr. Chamberlain by the hypothecation or sale of $100,000 of Barnes mortgage bonds?

Ans. I have no knowledge of it in either way; I have no recollection of anything of the kind; I was not present at half of the meetings and did not know all that was going on.

Ques. Do you know the fact, by your own knowledge or by the statement of any officer or director of the company, that the note to Chamberlain and the bonds as collateral thereto were left deposited with Meigs & Greenleaf, of New York city?

Ans. I heard they were so left.

Ques. What efforts did the board of directors of said railroad company make to pay said note of Chamberlain at its maturity?

Ans. I hardly know; I understood Mr. Stanton made an effort, but how much of an effort I couldn't say.

Ques. Was there any effort made to your knowledge by the individual directors, or any of them, to pay, or attempt to pay said note at its maturity? If yea, state the name of the director or directors, and what effort he or they made in that behalf.

Ans. I understood there was an effort, but by whom I can't say.

131 Ques. Do you know of your own knowledge of any effort made, either by the board of directors or the individual members of the board, to meet the note?

Ans. It is so long since that I can't remember what effort was made, nor how much.

Ques. Can you remember that any effort was made to your knowledge?

Ans. I cant't say more than I have answered above; I understood there was an effort, but how much I can't say.

Ques. Was you present at a meeting of the board of directors, held at the La Farge House, in the city of New York, when the question was discussed or agitated as to the payment of said note and preventing a sale of said bonds?

Ans. I don't remember any particular meeting now.

Ques. Was there ever a meeting of the board of directors to your knowledge held in the city of New York, or anywhere else, to devise or adopt a plan by which said note could be paid and the bonds prevented from being sold?

Ans. I don't remember now. My impression is there was one in Albany, but I am not certain.

Ques. Was the maturing of that note and the sale of those bonds in case the note was not paid talked of or discussed at various times by the board of directors to your knowledge?

Ans. I don't remember any such conversation.

Ques. Did the said board of directors to your knowledge adopt any plan whatever to prevent a sacrifice of those bonds?

Ans. I suppose they did, but can't say now.

Ques. What plan do you suppose they adopted?

Ans. I can't say.

Ques. Do you know that they adopted any plan?

Ans. I can't say as to that.

Ques. Was it ever discussed or talked over that the directors in their individual capacity should advance the amount of the note and take a proportionate amount of the bonds for the advance?

Ans. I have no recollection of any such conversation.

Ques. Was such a plan ever proposed by any person or persons to your knowledge?

Ans. I have no recollection of any such proposition.

Ques. Will you state as a matter of fact that no such plan was proposed by any party or parties?

Ans. I can't state whether any such plan was proposed or not; I have no recollection of it either way.

Ques. Did you, as one of the committee, know the fact that the president of the company had been notified by Meigs & Greenleaf that if the note was not paid at maturity the bonds would be sold, or did you have any information on that subject from any source?

132 Ans. I don't know whether the president was notified or not; I don't remember whether I had any information upon the subject from any source.

Ques. Did you, as one of the committee, make any, and if any, what, effort to prevent the sacrifice of the bonds put up as collateral to the Chamberlain note?

Ans. It so long since that I can't remember what disposition was done with the thing.

Ques. What became of the said $400,000 bonds?

Ans. I think they were sold.

Ques. To whom?

Ans. I think Mr. Gilbert, of Albany; H. G. Gilbert bought some; I couldn't name any one else.

Ques. At what price were said bonds sold?

Ans. I think at about five cents on the dollar; somewhere in that neighborhood.

Ques. Were said bonds sold at public sale?

Ans. I can't say.

Ques. Do yon know the fact from your own knowledge that said bonds were ever sold?

Ans. As I didn't see the bonds put up I can't tell what were sold.

Ques. repeated.

Ans. I can't say.

Ques. Do you know the fact of your own knowledge that said bonds were ever offered at public sale?

Ans. I can't say whether they were or not.

Ques. Was you ever the owner of any of the bonds issued by the company and secured by the Barnes mortgage?

Ans. I was.

Ques. What amount of said bonds?

Ans. I bought ten thousand dollars of them in Milwaukee of the Watkins estate—I think of Mr. Lynde, as administrator; I have bought others since, at different times; five thousand dollars of them that came from Mr. Russell Sage, I believe; I don't remember buying any more: I bought one $500 bond within the last thirty days.

Ques. When did you purchase the bond of the Watkins estate?

Ans. I can't recollect; soon after the foreclosure by Barnes; I paid ten cents on the dollar for them cash, for myself.

Ques. Have you given me a statement of all the bonds secured by the Barnes mortgage which you have ever owned or in which you have had any interest?

Ans. No; I bought at different times, but can't remember the amounts.

Ques. What did you pay on an average for the bonds purchased and owned by you?

133 Ans. I can't undertake to give you an average; I never averaged them.

Ques. What is the highest price in cash which you have ever paid for any of the bonds secured by the Barnes mortgage?

Ans. I can't say exactly; I have bought at different prices.

Ques. What is the largest price you have paid in cash for any of the said bonds?

Ans. That I can't say.

Ques. What is the largest amount of said bonds that you have ever had at any one time, or in which you have been interested?

Ans. I can't say; I can't remember the amount now.

Ques. Did you own any of the said bonds prior to the sale by Barnes?

Ans. I think I owned four of them

Ques. Is that all?

Ans. I don't remember of any more now.

Ques. Had you ever at any time prior to said sale been the owner of or in any way or manner interested in any of said bonds except the four just mentioned by you?

Ans. I can't say now, for I can't recollect now the dates in which I became interested.

Ques. Did you own or have any interest, directly or indirectly, in any of said bonds in the month of January, 1859?

Ans. I wouldn't swear that I had or had not.

Ques. Did you in the month of January, 1859, receive or become interested in said bonds to the amount of seventy-five thousand dollars, or thereabouts?

Ans. I can't say.

Ques. If you had in the month of January, 1859, seventy-five thousand dollars of said bonds, would you not be apt to recollect the fact?

Ans. I don't know that I would.

Ques. Will you swear that as a matter of fact you did not have in January, 1859, seventy-five thousand dollars of bonds secured by the Barnes mortgage?

Ans. I can't swear whether I had or had not at that time.

Ques. What is your best recollection upon that point?

Ans. I have no recollection about it as to that time, it is so long ago.

Ques. Did you ever at any time receive from any party a portion of the bonds put up as collateral to the Chamberlain note?

Ans. Not a dollar to my knowledge, unless I may have bought them in the market.

Ques. Do you know from the statements of any officer or director of the La Crosse road who became the purchaser or purchasers

134 of the bonds put as collateral to the Chamberlain note?

Ans. I don't know that I do.

Ques. Do you know of any officer or director of the La Crosse

Railroad Company being present at the time the said bonds were disposed of?

Ans. I can't give any names now.

Ques. Were any of said bonds purchased by third parties to your knowledge for the benefit of any of the officers or directors of the La Crosse Road, or with the understanding that any officer or director of said road should have an interest in any of said bonds?

Ans. I don't know of any such arrangement.

Ques. Did you own any of said bonds prior to the maturity of the Chamberlain note?

Ans. I don't know when the Chamberlain note matured.

Ques. Did you own any of said bonds prior to the month of January, 1859?

Ans. I can't say.

Ques. What amount of said bonds did you own or in which you were interested in the month of January, 1859?

Ans. I don't remember what I had in January, 1859.

Ques. Was it as high as ten thousand dollars?

Ans. I can't say.

Ques. Did you own any at that time?

Ans. I am not sure whether I did or not; I don't remember the dates when I bought.

Ques. Give me the name or names of the party or parties, or any of them, from whom you have purchased bonds secured by the Barnes mortgage in either the cities of Troy, Albany, or New York.

Ans. I don't think of any names except that I have already given you; I think I bought two thousand to four thousand dollars from Judge D. V. N. Radcliffe, of Albany; I don't remember what I paid him for them; can't remember any one else.

Ques. Did you ever purchase any of said bonds from one Aaron S. Bright, of New York?

Ans. I don't remember purchasing any from him.

Ques. Do you have your office in New York with said Bright?

Ans. I receive my letters there; I don't know that I can call it my office.

Ques. Have you a desk there?

Ans. No, sir.

Ques. Do you do your correspondence there?

Ans. Generally at my house; I write some letters there.

135 Ques. Do you not make it your headquarters at the office of said Bright when you are in the city of New York?

Ans. I can't say that I make it my headquarters; I am in and out there and get my letters there; I was subpœnaed there this morning.

Ques. How do you know that H. G. Gilbert bought any of those bonds?

Ans. I purchased some there for him.

Ques. What amount?

Ans. I can't say.

Ques. When did you make the purchase?

Ans. I can't say when.

Ques. What did you pay for them?

Ans. I don't remember now; I kept no memorandum of the transaction.

Ques. Did you purchase them at public or private sale?

Ans. I can't say whether it was public or private.

Ques. What is your best recollection on that point?

Ans. I can't say.

Ques. Did you pay higher than six cents on the dollar for those bonds?

Ans. I don't remember the amount I paid for them.

Ques. State as near as you can, and according to your best recollection, the price you paid for those bonds.

Ans. I should think it was about six cents on the dollar, but am not positive.

Ques. State as near as you can the time when you purchased those bonds.

Ans. I can't give the time; don't know as I can within six months; I couldn't swear positively what year it was in; I think it was in the year 1859, but can't tell whether it was January, July, or December.

Ques. What is your best recollection as to the time when you purchased those bonds?

Ans. You have it in my last answer as near as I can give it.

Ques. Do you swear it was not in the month of January, 1859, that you purchased those bonds?

Ans. I couldn't swear that it was or was not; I have no date or memorandum to go by.

Ques. At whose request did you purchase those bonds?

Ans. Very likely at the request of Mr. Gilbert.

Ques. Did you pay for them?

Ans. I paid for those with his money, I suppose; money he sent me.

Ques. Did you notify him of those bonds being at Meigs & Greenleaf's, and for sale?

Ans. Not to my knowledge.

136 Ques. What became of those bonds after you purchased them, to your knowledge?

Ans. I never saw them after that.

Ques. Do you know by the statements of any officers or directors of that railroad company that any of the bonds came into the possession of any officer or director of said company?

Ans. I never heard any one of them say anything about it that I am aware.

Ques. Are you at the present time an owner of, or interested in, the stock of the Milwaukee and Minnesota Railroad Company? If yea, what amount of stock?

Ans. I am interested and owner of some of the stock; I can't tell the amount.

Ques. Do you hold as high as fifty thousand dollars of the stock of that company?

Ans. I do.

Ques. Do you hold or control, or is there held and controlled by your friends, a controlling interest in the stock of that company?

Ans. I suppose we do.

Ques. State if you please who are the largest stockholders in that company.

Ans. I can't state without looking at the books.

Ques. Is Aaron S. Bright one of the stockholders?

Ans. He is; can't tell the amount; can't say whether as high as $100,000.

Ques. Did you exchange your Barnes mortgage bonds for stock in the Milwaukee and Minnesota Railroad Company?

Ans. I did.

Ques. Have you been an officer or director in the Milwaukee and Minnesota Railroad company?

Ans. I have been a director; I am still.

Ques. Have you furnished any portion of the means to carry on the litigation to recover what was called the eastern division of the La Crosse and Milwaukee Railroad?

Ans. I have furnished some funds.

Ques. Was you one of the active parties in organizing the Milwaukee and Minnesota Railroad Company?

137 Ans. No, sir.

Ques. What amount of bonds secured by the Barnes mortgage, or about what amount, have you converted or caused to be converted into the stock of the Milwaukee and Minnesota Railroad Company? State as near as you can.

Ans. I can't state the amount; I have no idea; it is not as high as six hundred thousand dollars; can't say whether it is over $100,000.

A. C. GUNNISON.

Subscribed and sworn to, this 30th day of August, 1864, before me.

GEO. F. BETTS, *U. S. Com.*

[5 cent rev. stamp cancelled.]

I certify that it has been made to appear to my satisfaction that in taking the above depositions the attorney for the complainants has made the following disbursements.

To marshal, serving 3 subpœnaes	$6 00
To fees to 2 witnesses	3 00
To commissioner	33 40
Total	42 40

August 30, 1864.

GEO. F. BETTS, *U. S. Com.*

138 UNITED STATES OF AMERICA, *Southern District of New York, City, county, and State of New York, ss:*

Be it remembered, that on this twenty-ninth day of August, in the year one thousand eight hundred and sixty-four, I, George F. Betts, a commissioner, duly appointed by the circuit court of the United

States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause personally to appear before me, at my office, at 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, Stephen H. Alden, to testify and the truth to say on the part of the complainants, in a certain suit or matter of controversy depending in the circuit court of the United States for the district of Wisconsin, at Milwaukee, wherein Frederick P. James, Abram M. Brewer, E. Bradford Greenleaf, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson and J. Howard Mitchell are complainants, against the Milwaukee and Minnesota Railroad Company, the La Crosse and Milwaukee Railroad Company, and Selah Chamberlain, defendants.

139 *Deposition of S. H. Alden.*

And the said Stephen H. Alden being about the age of forty-two years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Stephen H. Alden, and he did thereupon depose, testify, and say as follows, viz: I reside in Albany, in the State of New York, that is more than 100 miles from Milwaukee, Wisconsin; I was a director in the La Crosse and Milwaukee railroad; I can't tell the exact year, but I think it was 1854; I have been a director perhaps two or three times in different years; I know the defendant, Selah Chamberlain; I don't recollect now of any note of the amount of twenty thousand dollars executed by the La Crosse Railroad Company to the defendant, Chamberlain; I know by hearsay that there was a mortgage executed by the La Crosse and Milwaukee Railroad Company to William Barnes, of Albany, trustee, known as the third mortgage; on reflection, I know this of my own knowledge; I don't know, either of my own knowledge or from any statements from any officers of the company, how many bonds were issued under that mortgage; I have owned some of the bonds issued and secured by that mortgage; I can't tell what amount; I think about thirty thousand dollars in amount at their face; I received them from the president of the company; I don't now recollect what I did with those bonds; I have disposed of them a great many years ago; I can't tell whether by trade or sale, nor to whom; I can't tell the amount that I received for them; I didn't, to my knowledge, exchange any of the third mortgage bonds for stock in the Milwaukee and Minnesota Railroad company; I may have done so, but I have no recollection; I don't recollect ever

trying to get an extension of the time of payment of any note from the La Crosse and Milwaukee Railroad Company to Selah Chamberlain; I don't now remember ever to have heard of the La Crosse company putting bonds to the amount of four hundred thousand dollars in the hands of Meigs & Greenleaf as collateral security to a note of twenty thousand dollars made by the company to Selah Chamberlain; I know George W. Luther and Alfred Noxon; I don't recollect any particular conversation with them, or either of them, in regard to the third mortgage above mentioned.

Ques. Before receiving from the president the bonds, as you have above testified, did you make any inquiries of the said Luther or Noxon, or any or either of the officers or directors of the La Crosse and Milwaukee Railroad Company, as to the mortgage executed to Barnes, or the nature of the security?

Ans. I understood from the company that such a mortgage was made to pay off their debts; I heard no particulars in regard to it only that it was a third mortgage; from my knowledge of the road I understood it was a third mortgage on the whole road, and a fourth mortgage on part.

Ques. What was the actual amount that you paid for said bonds?

Ans. I paid in the same amount of bonds that I had paid for cash, seventy cents on the dollar, with coupons attached for a year or so; the coupons I kept; these bonds were part of a lot of three
140 hundred thousand dollars, issued about 1855 to pay for iron; most of them were taken by Vose, Perkins & Co. for iron, at eighty cents on the dollar; I took about one hundred thousand dollars of these bonds from Vose, Perkins & Co. at seventy cents on the dollar, paying cash for them; these bonds were not secured by any mortgage; the first mortgage bonds were the only ones that had then been issued.

Ques. I take it you can name one person to whom you sold or disposed of any of your so-called third mortgage bonds?

Ans. I couldn't to save my life; I can't think of a person to whom I sold any; I presume at that time I held not less than a million in bonds and stocks of different railroad companies; I can't, therefore, remember what I did with any particular lot; the third mortgage bonds have never had a place at any stock board to my knowledge, nor any quoted market value; I have operated largely in stocks and bonds in New York city; the third mortgage bonds have not had any regular or quoted market value in New York to my knowledge; I don't know that I now own any stock in the Milwaukee and Minnesota Railroad Company; I think I have bought and sold that stock at different times, but I don't know whether it was ever transferred to my name on the books of the company.

Ques. Have you ever received in any manner, either by sale or otherwise, any of the stock of said last named company from any person or persons that were or had been officers of the La Crosse and Milwaukee Railroad Company?

Ans. Not to my knowledge, ever from any officer or director, nor

did I ever dispose or sell any to any officer or director of the company.

Ques. Have you ever had in your possession or under your control any of the so-called third mortgage bonds other than those stated above?

Ans. Not to my knowledge, not one.

Ques. Do you know of your own knowledge or from the statements of any of the officers or directors of the company where the third mortgage bonds which you received came from?

Ans. They came from the company, of course; I received them from the company.

Ques. What time did you receive them from the company?

Ans. I can't tell; I haven't the least idea, except that it was the same summer the mortgage was made.

Ques. Do you know whether those bonds, or any of them, had ever before been delivered to any other party as collateral security?

Ans. I do not.

Ques. Do you know from the statements of any of the parties who delivered to you those bonds, whether they were bonds that had been previously put up as collateral security to any paper of the company?

Ans. I never heard anything of the kind.

Ques. Was there ever at any time to your knowledge any bonds of that company taken on your name by any party or parties?

Ans. No, sir.

Ques. Do you know of any stock in the Minnesota Railroad Company being allowed to stand in your name without your knowledge or consent?

Ans. I do not.

141 Ques. Have you ever stated at any time to any parties the object or purpose of the execution of the so-called third mortgage?

Ans. I may have stated that its object was to compromise and pay off the debts of the company, but I don't recollect any particular conversation of the kind.

Ques. Did you ever discuss with George W. Luther and Alfred Noxon, in the presence of Moses Kneeland of Milwaukee, the matter of the third mortgage, and in which discussion it was maintained that the purpose of foreclosing the third mortgage was for wiping out and cutting off the stock and unsecured debts of said company, or words in substance to that effect?

Ans. I never talked with either of them a word on the subject; I don't know nor do I remember to have ever heard that four hundred thousand dollars of these third mortgage bonds were delivered by the company to Selah Chamberlain, as collateral to their note; these transactions all took place five or six years ago; since that time my operations have been very large, and the particulars of these transactions might pass out of my memory.

S. H. ALDEN.

Sworn to before me this 29th day of August, A. D. 1864.

GEO. F. BETTS, *U. S. Commissioner.*

[5 ct. rev. stamp, cancelled.]

142 UNITED STATES OF AMERICA, *Southern district of New York, City, county, and State of New York, ss:*

Be it remembered, that on this twenty-ninth day of August, in the year one thousand eight hundred and sixty-four, I, George F. Betts, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause personally to appear before me, at my office, at 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, Nehemiah P. Stanton, to testify and the truth to say on the part of the complainants, in a certain suit or matter of controversy depending in the circuit court of the United States for the district of Wisconsin, at Milwaukee, wherein Frederic P. James, Abram M. Brewer, E. Bradford Greenleaf, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, and J. Howard Mitchell are complainants, against the Milwaukee and Minnesota Railroad Company, the La Crosse and Milwaukee Railroad Company, and Selah Chamberlain, defendants.

And the said Nehemiah P. Stanton, being about the age of forty one years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, I carefully examined the said Nehemiah P. Stanton, and he did thereupon depose, say, and testify as follows, to wit:

I reside in the city of New York, more than one hundred miles distant from the city of Milwaukee, in the State of Wisconsin. I was elected president of the La Crosse and Milwaukee Railroad Company in April, 1858. Alfred C. Gunnison, Eli Perry, William Watson, D. V. N. Radcliffe, Artemas Fish, George W. Luther, J. H. Shears, John P. McGregor, William E. Smith, Willlam A. Guest, and Alfred Noxon were associated with me as directors during the time or a portion of the time that I was president. I was president at least till a sale of the road under the so-called third mortgage. I know William Barnes, of Albany; he is a cousin of mine. I know of the La Crosse road executing a mortgage to Barnes, as trustee, to secure two millions of bonds. The whole amount was issued by the company in various ways; I mean by issued, signed, sealed, and passed out of the hands of the co.; of this I think five hundred and fifty thousand of bonds were placed in the hands of Stoddard Judd, in trust, to pay or adjust certain farm mortgage indebtedness. While I was west in the fall of 1858 the board of directors held a meeting east here, and appointed a committee, consisting of William A. Guest, Alfred Noxon, and A. C. Gunnison, giving them full power in settling claims against the

co., and paying coupons on land-grant bonds by using the so-called third mortgage bonds. That committee gave a note to Selah Chamberlain for twenty thousand dollars, the note of the La Crosse Railroad Co., I think, signed by Mr. Guest as vice president. The consideration of this was the amount due to Chamberlain on contract in finishing the last part of the La Crosse road; he had not finished the work, but was finishing it. As his monthly estimate became due he wanted his money. There was put up as collateral to this note four hundred thousand dollars of the so-called third mortgage bonds. That note was paid shortly after maturity; my impression is that it was renewed once for a short time. Mr. Chamberlain put these bonds in the hands of Meigs & Greenleaf, brokers, in New York, who notified the co. of the maturity of the note in writing; and after the time limited by their notice the bonds were sold, as I was informed, by Meigs & Greenleaf, and the note was paid and delivered to me cancelled. I don't know whether that sale was a public one; I was not here at the sale, but was in Wisconsin. Upon receiving the notice from Meigs & Greenleaf I notified the committee, as I was going west, to attend to the payment of the note. From that time on I left the matter, so far as that note was concerned, in the charge of the committee; this was only a short time before the day of sale. Much pains and time had been used by myself and associate directors previous to this with Mr. Chamberlain to pay the note, and to prevent his sacrificing the bonds by such sale.

143 I do not know, except from hearsay, what became of those four hundred thousand dollars of bonds.

Ques. Do you know by the statements of Albert C. Gunnison, Alfred Noxon, Wm. A. Guest, or Wm. Platt, or either of them, what became of the said four hundred thousand dollars of bonds or any part of them?

Ans. I don't think any or either of them have made any statements to me in regard to it.

Ques. Do you know from your own knowledge, or from statements of any of the parties named in the above interrogatory, that said bonds, or any portion of them, ever came into the possession of any of said named parties, or either of them?

Ans. I don't know.

Ques. Do you know the fact that they, or either of them, have ever claimed any interest in said bonds, or any of them?

Ans. I do not.

Ques. Do you know for what amount on the dollar said bonds were disposed of, either from your own knowledge or by the statements of any officer or director of the company?

Ans. I know from the statement of Meigs & Greenleaf, accompanying the cancelled note, that it was enough to pay the note, or at least to pay five cents on the dollar.

Ques. Do you know, either from your own knowledge or the statement of Meigs & Greenleaf, made at the time of the delivery of the note cancelled, who purchased those bonds, or any of them?

Ans. I don't.

Ques. Was the sale or the probabilities of the sale of those bonds

ever discussed by a meeting of the board of directors at the La Farge House in the city of New York to your knowledge?

Ans. I think it was; quite confident it was, at that meeting I was present. Noxon, Guest, Gunnison, Radcliff, Luther, I believe, but am not certain. I believe also Mcgregor and Smith.

Ques. At that meeting what did the board of directors do in regard to paying that note, or taking care of those bonds?

Ans. I can't say.

Ques. Was it finally agreed and determined at that meeting that the co. had not the means to take up the note?

Ans. I don't think it was determined that all hope of taking up the note was gone.

Ques. Did any of the directors, and if so, which of them, suggest or discuss the plan of the directors themselves advancing their own money and taking up the note, taking as collateral security therefor a proportional amount of the bonds for the sums so advanced?

Ques. No such plan was suggested. But it was suggested that they should advance the money and take up the note without security. I don't know who suggested that. I can't say whether that suggestion was discussed.

Ques. State what efforts were made by the board of directors to prevent a sacrifice of four hundred thousand dollars of bonds put up as collateral to Chamberlain note?

144 Ans. I understand at the time the note was given and the agreement made to put the $400,000 as collateral, that Mr. Chamberlain had promised to take care of the note. He was mortgagee in possession of the road, and he received all the earnings, and agreed to advance to the co. a certain portion each month to take care of this note, and other expenses. And not until the note was nearly due did he inform the co. that by legal advice he could not do it. Then the question came up how the note was to be paid. And a committee were appointed to see Mr. Chamberlain, and see if there was no way in his power to take care of the note, and not have the bonds sold. Also, to see if the money could not be raised through the directors personally, and all failed.

Ques. Did the directors make a bona fide effort themselves to advance the amount of that note to your knowledge?

Ans. I believe they did.

Ques. Do you know that the directors, or any of them, did make the effort? If yea, state which one of the directors, and what effort he made.

Ans. I can't particularize.

Ques. Do you know, of your personal knowledge, that Mr. Chamberlain entered into such an arrangement as you have testified he entered into?

Ans. I do not. He and I did not converse together much; we are not very friendly.

Ques. State whether or not you ever had in your possession and in which you had any interest any of the so-called third mortgage bonds?

Ans. Not while I was officially connected with the road.

Ques. Did you ever, at any time, have any and what amount of the so-called third mortgage bonds in which you were interested? If yea, what amount, and from whom did you obtain the same, and what price did you pay therefor, and how and in what manner was the price paid or agreed to be paid?

Ans. I bought, I think, two one thousand bonds once of Judge D. V. N. Radcliffe; forget what I paid for it; I believe four or eight cents on the dollar; I paid money for it; I couldn't tell whether these were part of the Chamberlain security bonds or not.

Ques. Did you, in the month of December, 1858, or at any other time, as president of the company, borrow any, and what sum of money, of one William Gould, and of one William Watson, and of one Seth R. Foster, and of one Henry G. Gilbert, and deposit with them, as collateral security, any of the so-called third mortgage bonds? If yea, state the amount borrowed from each, and the amount, if any, of said bonds put up as collateral security to said loan or loans.

Ans. I borrowed at different times of each of the above-named persons money, I think of Watson $2,500, of Gould $2,500, of Foster $3,000, and of Gilbert $7,500, part of which was to meet previous loans borrowed from him, to secure which I gave notes of the company, and the so-called third mortgage bonds as collateral, at the rate of five to ten cents on the dollar. I can't remember the aggregate amount of the bonds. It may have been all at five cents on the dollar. If it was all at five cents on the dollar it would amount to $310,000.

Ques. What became of those bonds?

145 Ans. I was notified that the notes were due, and if not paid the bonds would be sold. I was afterwards notified that the bonds were sold, and the notes were cancelled and returned to me. I don't know what they were sold for.

Ques. Have you any personal knowledge as to whether said bonds, or any of them, were offered at public or private sale in any manner whatever?

Ans. I have no personal knowledge.

Ques. From whom did you learn the fact that said bonds had been sold?

Ans. From the parties sending me the cancelled notes, but I cannot recall who sent me them.

Ques. Have you ever been any officer or director of the La Crosse Railroad Co.? State how or in what manner said bonds were disposed of, or who received than.

Ans. I have never.

Ques. Was there any, and if any, what amount of money in the hands of the La Crosse Railroad Co. at the time of the maturity of the notes given to such parties or either of them?

Ans. I think that Foster's note was paid in money, and the first loan of Gilbert was paid in money. I think some parties out west, who were creditors of the road, had the privilege of taking up the other notes, and taking the collaterals.

Ques. What effort did the board of directors make to prevent a sacrifice of those bonds?

Ans. I don't think of any particular effort.

Ques. Did the board of directors suggest or discuss any plan by which to save a sacrifice of those bonds?

Ans. I don't remember any particular effort.

Ques. Have you now in your possession those notes? If not, state where they are to the best of your knowledge.

Ans. I think I have no papers of the La Crosse Co. in my possession. By request of Mr. Carpenter and Fleming of Milwaukee I sent all papers of all descriptions that I held in my possession connected with the La Crosse railroad to them.

Ques. State, as near as you can, the dates of said notes, and the times when they became payable.

Ans. They were dated and made payable, I think, in 1858. I don't think any note was over six months nor less than one month.

Question. What was said by you or the parties at the time of the giving of the notes as to the sale or probable sale of these bonds at the maturity of the note or notes?

Ans. I don't recollect of anything being said.

Ques. From the time of the delivery of those notes to those parties up to the maturity of the paper what steps were taken by the company, or any officer of the company, to secure the payment of the notes at maturity?

Ans. I don't recollect of any steps.

Ques. How and in what manner was the money obtained from said Gould, Watson, Foster, and Gilbert applied?

146 Ans. In payment of debts of the company.

Ques. What debts? Name them.

Ans. Claims against the roundhouse property in Milwaukee; part of it was applied to that; I think I paid it to a man named Williams; I believe Charles H. Williams; I believe some of that money was used to redeem notes with which we had put bonds as collateral, or rather some note; I can't tell what nor to whom; I don't know the amount I paid upon the incumbrance on the roundhouse property; I think it did not entirely lift the incumbrance, but settled it for a time; the representations in the board were that the property was in danger of being sold on account of Chamberlain's refusing to do anything about it.

Ques. Do you know, of your own knowledge, and as a matter of fact, that that representation was true?

Ans. Williams said to me he must have his money, or the property would be sold and we dispossessed, and I knew of no other way to get the money; an ejectment suit had been commenced against the company; the object of the loan from Gould, Watson, and Gilbert was, as I know, to lift the incumbrance on the roundhouse property, and to save it from sale; the whole amount realized from that loan was not applied to that purpose, for the reason that it was not all due, and the party would not receive what was not due; out of the proceeds of the loan we paid Barnes, trustee, $500 or $1,000; we paid

Ryan, counsellor, $250, I think, to be used by him in paying a claim of a man named Welnor, who had a claim on some portion of the same property. We paid, also, H. L. Palmer, for past services, $800, I think; Moses Kneeland, I think, $500 to $600; and various amounts to directors for claims for time and services; amounts I cannot recollect. When the road was sold I had no portion of the money left, but had vouchers for every dollar that was expended; at the time I paid the incumbrance on the roundhouse property I had not heard that an arrangement had been made by which an extension of the time to pay the incumbrance had been given.

Ques. Was you not urged by John P. McGregor and William E. Smith, two resident directors in the State of Wisconsin, to return to Albany with that money, and take up the notes and redeem the bands?

Ans. I don't think I could have been, for the reason that a feeling of enmity between them and me grew out of the fact that I would not pay them as much of the money that I had as they claimed was due them or services extraordinary.

Ques. Was you not informed that said McGregor and Smith had agreed with the owner of the incumbrance on the roundhouse property that upon payment of a small portion of the incumbrance time would be given to the company for one to two years within which to pay the residue, and that Chamberlain was ready and willing to pay the same whenever requested; and what was said to you by them, or either of them, upon this point?

Ans. I don't recollect any conversation with them on the subject.

Ques. Will you state positively that you had no such conversation with them?

Ans. I don't think I had.

Ques. Are you positive on that point?

147 Ans. Am positive that I don't think I had.

Ques. Will you state that no such conversation did in point of fact take place?

Ans. In point of fact, I state I don't think it ever did.

Ques. Did you know the fact from any source that such an agreement had been made?

Ans. I did not.

Ques. Did you not know the fact before a loan was made that Chamberlain had advanced the amount of incumbrance upon that property?

Ans. I don't remember that I did.

Ques. Was you not urged by parties in Milwaukee to return to Albany, and with that money redeem those notes and prevent a sacrifice of those bonds?

Ans. I don't remember that I was.

Ques. At the time of this loan what amount of money was there in the hands of the company, or of Stephen H. Alden for the company?

Ans. I don't think the company had any money to mention; Mr. Alden was holding some in trust to be used in payment of certain expenses specified in the written agreement accepting the trust; I think

the whole amount placed in his hands was either $10.000 or $12,000, mostly for legal expenses; some had been incurred and some were being incurred; I think the written agreement of trust was sent to me after the closing of that trust and settlement by the courts; it may be among the papers forwarded to Milwaukee; I have no knowledge where it is; I can't say how much of that trust fund was not used or due at the time I made these loans.

Ques. Do you know of the fact from the statement of any officer or director of the La Crosse road, that Gould cancelled his note for $2,500, by taking the $50,000 bonds put up as collateral to it?

Ans. I don't; I never heard it intimated before,—

I don't know that Watson took the $50,000 bonds collateral to his note in payment; I have been an owner of stock in the Milwaukee and Minnesota Railroad Company; three hundred and fifty shares is all I think I have ever owned.

The amount I paid Williams on the roundhouse property might have been the amount that McGregor and Smith had agreed upon with him; but I don't recollect such agreement.

Ques. Have you ever had at any time any of the so called third mortgage bonds, except those you bought from Radcliffe?

Ans. I don't think I ever had.

NEHEMIAH P. STANTON.

Subscribed and sworn to before me, this 29th day of August, A. D. 1864.

GEO. F. BETTS,
U. S. Commissioner.

[5 ct. rev. stamp, cancelled.]

148 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, George F. Betts, a commissioner, duly appointed by the circuit court of the United States for the southern district of New York in the 2d circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify, that the reason for taking the foregoing depositions is, and the fact is, that the witnesses are material and necessary in the cause in the caption of said deposition named, and that they reside more than 100 miles distant from the district of Wisconsin, the place of trial of said cause.

I further certify, that no notification of the time and place of taking said deposition signed by me was made out and served on the defendants to be present at the taking of the deposition and to put interrogatories, if he or they might think fit.

I further certify, that on the 29th and 30th days of August, in the year of our Lord one thousand eight hundred and sixty-four, I was attended by the counsel for the complainants and by the said witnesses, who were of sound mind and lawful age, and the said witness were by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the depositions were by me reduced to writing, in the presence of the said witnesses and from their statements, and after carefully reading the same to the said witnesses, they subscribed the same in my presence. I have retained the said depositions in my possession for the purpose of depositing the same in the post office addressed to the clerk of the court for which the same were taken.

And I do further certify, that I am not of counsel nor attorney for either of the parties in said depositions and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof, I have hereunto set my hand, this thirtieth day of August, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the United States the eighty-ninth.

[L. S.] GEO. F. BETTS, *United States Commissioner,*
Duly appointed by the Circuit Court of the United States
For the Southern District of New York, in the Second Circuit.

[5 ct. rev. stamp, cancelled.]

149 UNITED STATES OF AMERICA, *Northern district of New York,*
City and county of Albany, ss:

Be it remembered, that on this second day of September, in the year one thousand eight hundred and sixty-four, I, Robert J. Hilton, a commissioner, duly appointed by the circuit court of the United States for the northern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause personally to appear before me, at my office, at No. 74 State street, in the city of Albany, in the northern district of New York, in the State aforesaid, William Watson, a resident of the city of Albany, N. Y., banker, to testify and the truth to say on the part of the complainants, in a certain suit or matter of controversy depending in the circuit court of the United States for the district of Wisconsin, in equity, wherein Frederic P. James, Abram M. Brewer, E. Bradford Greenleaf, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, and J. Howard Mitchell are complainants,

and the Milwaukee and Minnesota Railroad Company, La Crosse and Milwaukee Railroad Company and Selah Chamberlain are defendants.

And the said William Watson being about the age of sixty-nine
150 years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine him and he did thereupon depose, testify and say as follows, viz:

I reside in the city of Albany, in the State of New York; that is more than one hundred miles from Milwaukee, in the State of Wisconsin; I know Alfred Noxon, of Crescent, in the State of New York; I made a contract to sell to him eighty shares of one hundred dollars each of the stock of the Milwaukee and Minnesota Railroad Company, and I delivered that amount of the stock to David V. N. Radcliffe, esq., of Albany, on the order and request of the said Alfred Noxon, on or about the 3d of September, A. D. 1862; Mr. Noxon gave me his note for his stock, and Mr. Radcliffe paid me on that note $680 50, leaving a small balance of $5 52 still due on the note, which said Noxon shortly afterwards paid to me and took up his note. Horatio G. Gilbert, esq., who was then the cashier of the Bank of the Capitol, in the city of Albany, negotiated the purchase of said stock for Mr. Noxon by me, and he delivered to me Mr. Noxon's note for the amount of the stock; I also, on the 1st day of October, 1862, sold to the said David V. N. Radcliffe eighty-five shares of the capital stock of the said Milwaukee and Minnesota Railroad Company of one hundred dollars per share for the sum of $680 cash. I am and have been for many years past a banker in the city of Albany, and was at one time elected a director of the La Crosse and Milwaukee Railroad Company, but resigned a few days after my election.

WILLIAM WATSON.

Taken, subscribed and sworn to before me, this 2d day of September, A. D. 1864, at city of Albany, N. Y.

R. J. HILTON,
U. S. Com. for the northern district of N. York, in 2d circuit.

151 UNITED STATES OF AMERICA, *Northern district of New York, City and county of Albany, ss:*

Be it remembered that on this first day of September, in the year one thousand eight hundred and sixty-four, I, Robert J. Hilton, a commissioner duly appointed by the circuit court of the United States for the northern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812. and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause personally to appear before me, at my office, at No. 74 State street,

in the city of Albany, in the northern district of New York, in the State aforesaid, George W. Luther, of the city of Albany, N. Y., coal merchant, to testify, and the truth to say, on the part of the complainants, in a certain suit or matter of controversy depending in the circuit court of the United States for the district of Wisconsin, in equity, wherein Frederic P. James, Abram M. Brewer, E. Bradford Greenleaf, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, J. Howard Mitchell are complainants, and the Milwaukee and Minnesota Railroad Company, La Crosse and Milwaukee Railroad Company, and Selah Chamberlain are defendants.

152 And the said George W. Luther being about the age of forty-eight years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine him, and he did thereupon depose, testify, and say as follows, viz:

I reside in the city of Albany, in the State of New York, which is more than one hundred miles from Milwaukee, in the State of Wisconsin. I was a director of the La Crosse and Milwaukee Railroad Company during the years 1858 and 1859. During the time I was director the third mortgage to William Barnes, esq., of the city of Albany, New York, was executed by said company; it was given to secure two millions of dollars of the bonds of said railroad company. I owned at one time about $40,500 of the said third mortgage bonds at their nominal value, but when I bought them or when I parted with them I cannot now state, but it was some time after they were issued. I paid for them about five per cent. on their nominal value. I believe the most of them were bought for me by William Watson, a banker of the city of Albany. I also bought some of them from Hon. Eli Perry, of the city of Albany, in connection with some of the second mortgage bonds on the eastern division of said company's road. I converted my third mortgage bonds into the stock of the Milwaukee and Minnesota Railroad Company at par, and by paying one per cent. to defray the expenses of the foreclosure of the third mortgage and the organization of the new company, I sold this stock—a portion to Alfred Noxon, of Crescent, in the county of Saratoga, in State of New York, and some of it, afterwards, the last I had, to Mr. Van Alstine, of Troy, and I sold some of it to another third party, whose name I do not recollect. I got for said stock on the sales thereof from seven to ten cents on the dollar. I did not, as a director of the La Crosse and Milwaukee Railroad Company, know of a note being executed by or on behalf of said company to Selah Chamberlain for twenty thousand dollars at the time said note was executed, and only knew of it afterwards from information of some of the other directors of said railroad company. It was reported in the board of directors that the note had been given and $400,000 of third mortgage bonds had been put up as collateral thereto some time after the same had been done. After or about the time this note matured myself and other directors made one or more efforts to get an extension of the time for paying the note held by Mr. Chamberlain, and my impression is that we succeeded in obtaining one extension, but of this I am not positive. I

recollect that Mr. John McGregor and Mr. William E. Smith,
153 of the western directors, accompanied me to the city of New York for the purpose, and, my impression is, there were also other directors in company with us on that occasion. I do not know or recollect of the company or its directors adopting any other plan to meet or pay this note, although various plans were discussed amongst the directors of said company. I understood, however, that these $400,000 collateral of the third mortgage bonds held by Mr. Chamberlain were sold to pay his note. I recollect of its being stated in the board of directors of said railroad company while I was a director that William Watson, of Albany, and William Gould, of the same place, had loaned money to the company and also taken the company's notes and some of the third mortgage bonds as collateral securities for their respective loans.

G. W. LUTHER.

Taken, subscribed, and sworn to before me on this 1st day of September, A. D. 1864, at city of Albany, New York.

R. J. HILTON, *United States Commissioner*
For the Northern District of New York, in 2d circuit.

154 UNITED STATES OF AMERICA, *Northern district of New York,*
City and county of Albany, ss:

Be it remembered that on this first day of September, in the year one thousand eight hundred and sixty-four, I, Robert J. Hilton, a commissioner duly appointed by the circuit court of the United States for the northern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 18 2, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause personally to appear before me, at my office, at No. 74 State street, in the city of Albany, in the northern district of New York, in the State aforesaid, William Gould, of the city of Albany, in the State of New York, bookseller, to testify on the part of the complainants in a certain suit or matter of controversy now depending in the circuit court of the United States for the district of Wisconsin, in equity, wherein Frederic P. James, Abram M. Brewer, E. Bradford Greenleaf, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, and J. Howard Mitchell are complainants, and the Milwaukee and Minnesota Railroad Company, La Crosse and Milwaukee Railroad Company, and Selah Chamberlain are defendants.

155 And the said William Gould being about the age of forty-nine years, and having been by me first cautioned and sworn

to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine him, and he did thereupon depose, testify, and say as follows, viz:

I am forty-nine years of age; reside in the city of Albany, in the State of New York, which is more than one hundred miles from the city of Milwaukee, in the State of Wisconsin. I knew N. P. Stanton, formerly president of the La Crosse and Milwaukee Railroad Company, and as such president in the latter part of A. D. 1858 said Stanton borrowed of me twenty-five hundred dollars and gave me a company's note for the amount and interest, and also fifty-one thousand dollars La Crosse and Milwaukee 3d mortgage bonds so called, being bonds secured by the Barnes mortgage. The note was made payable at a certain day, which I do not now recollect, with power to sell the collateral mortgage bonds on notice at public or private sale in case default was made in payment of the note. The note was not paid at its maturity, and thereupon demand thereof was made and notice was also given that the mortgage bonds would be sold at private sale unless the amount due on the note was paid by a certain day. That amount was not paid pursuant to the notice, and the bonds were sold at private sale pursuant to the previous notice, and were sold to William Watson, of the city of Albany, for just the amount due on the note of principal and interest. Mr. Watson paid for them in cash, and the bonds were thereupon delivered to him. I am not aware that the railroad company made any effort to meet said note or to pay the same. At the time Mr. Stanton procured this loan from me, one of the inducements he held out to me was that the money loaned would be applied to relieve the depot property of the railroad company at Milwaukee from some liens. At this time I was the holder and owner of other mortgage bonds issued by said railroad company. I do not recollect that any officer or agent of said railroad company applied to me to postpone the sale of the mortgage bonds given to me as collateral for the note given to me as security for the payment of my loan of $2,500. I bought of the said Mr. William Watson about the same time I sold to him about the same number and amount of the same class of railroad mortgage bonds which he held as collateral security for a loan which I understood he had made to the said railroad company, for which I paid him five or six cents on the dollar, and thereupon Mr. Watson delivered to me the mortgage bonds so purchased of him. The nominal amount of these bonds was $50,000. I converted these bonds into stock of the Milwaukee and Minnesota Railroad Company, and two or three years thereafter sold the
156 stock to the amount of the bonds to Albert C. Gunnison, of the city of New York, at six per cent. of its face. The bonds were converted by me into stock of the Milwaukee and Minnesota Railroad Company at their face, that is, fifty thousand dollars of the bonds for fifty thousand dollars of the stock, at the time I made the loan of $2,500. There was nothing said or intimated to me by Mr. Stanton that the bonds would not be redeemed, to the best of my recollection.

WILLIAM GOULD.

Taken, subscribed, and sworn to before me this 1st day of September, A. D. 1864, at the city of Albany, New York.

R. J. HILTON, *United States Commissioner*
For the Northern District of New York, 2d circuit.

157 UNITED STATES OF AMERICA, *Northern district of New York, Albany county and city, ss :*

I, Robert J. Hilton, a commissioner duly appointed by the circuit court of the United States for the northern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,' " passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing depositions is, and the fact is, that the witnesses William Gould, George W. Luther, and William Watson are severally residents of the city of Albany, in the State of New York, and which is at a greater distance than one hundred miles from the place of trial of the said action.

I further certify that no notification of the time and place of taking said depositions signed by me was made out and served on the opposite parties or their attorney or either of them to be present at the taking of the depositions, and to put interrogatories if he or they might think fit, because the said adverse parties do not, nor does either of them, reside within one hundred miles of the place of taking the same, nor has the said adverse parties any agent or attorney known to me within that distance.

I further certify that on the first and second days of September, in the year of our Lord one thousand eight hundred and sixty-four, I was attended by the said William Gould, George W. Luther, and William Watson, the said witnesses, who were of sound mind and lawful age, and the said witnesses were severally by me first carefully examined and cautioned and sworn to testify the whole truth, and the depositions were by me reduced to writing in the presence of the respective witness and from their respective statements, and after carefully reading the same to the respective witnesses, they subscribed the same in my presence. I have retained the said depositions in my possession for the purpose of returning the same duly sealed up and addressed by mail, and mailing same with my own hand to the court for which the same are taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof, I have hereunto set my hand and seal this second day of September, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the United States the eighty-ninth.

R. J. HILTON, *United States Commissioner,*
Circuit Court of the United States for the
Northern District of New York, in the second circuit.

[5 c't stamp, cancelled.]

Com'rs bill taking and certify'g dep'ns	$13 25
3 witnesses fee, 1 day each	4 50
Postages and U. S. stamps	20
Paid by compl'ts	17 95

158 *Exhibit No.—The Palmer mortgages on eastern division.*

This indenture made the thirtieth day of June, in the year of our Lord one thousand eight hundred and fifty-four, between the La Crosse and Milwaukee Railroad Company, a corporation duly constituted by the laws of the State of Wisconsin, party of the first part, and Francis A. Palmer, of the city of New York, party of the second part, witnesseth, whereas the said La Crosse and Milwaukee Railroad Company, in pursuance of their corporate powers, are now engaged in constructing a railroad from the city of Milwaukee, on Lake Michigan, to La Crosse, on the Mississippi river, in the State of Wisconsin, and for that purpose, in part, have resolved to raise a sum of money by loan, for the purpose of purchasing iron, rails, and machinery therefor, and of aiding in the construction of said railroad and putting the same into operation, and for the objects and purposes aforesaid, and in order to secure the payment and satisfaction of the moneys to be raised as aforesaid, it is proposed and intended by the said parties of the first part to execute, issue, and deliver five hundred bonds or writings, obligatory, each for the sum of one thousand dollars, to be numbered respectively from number one (1) to five hundred (500) inclusive, and nine hundred bonds, each for the sum of five hundred dollars, to be numbered respectively from number one (1) to nine hundred (900) inclusive, which bonds are to be in the following form:

159 "UNITED STATES OF AMERICA, *State of Wisconsin.*

"No. —. $——.

"The La Crosse and Milwaukee Railroad Company.

"Know all men by these presents, that the La Crosse and Milwaukee Railroad Company acknowledge themselves indebted to Francis A. Palmer, or bearer, in the sum of dollars, which sum said company promise to pay the said Francis A. Palmer, or to the holder hereof, at the Broadway Bank, in the city of New York, on the first day of November, in the year one thousand eight hundred and seventy-four, and also interest thereon at the rate of eight per centum per

annum, semi-annually, on the first day of each November, and of each May, ensuing the date hereof, until the said principal sum shall be paid on the presentation and delivery of the annexed warrants at said bank. This bond is one of a series of fourteen hundred bonds of the company aforesaid, of even date, to wit: 500 bonds for the sum of $1,000 each, numbered respectively from number 1 to number 500 inclusive, and 900 bonds for the sum of $500 each, numbered respectively from number 1 to number 900 inclusive, amounting in the aggregate to $950,000, secured by a mortgage executed in trust to Francis A. Palmer, of the city of New York, upon that part of the road of said company extending from its eastern termination, in the city of Milwaukee, to Portage City, being 95 miles in distance, together with the property and effects of said company on that part of the road. And said company further agree that this obligation, and all rights and benefits arising therefrom, may be transferred by general or special indorsement, or by delivery, as if the same were a note of hand payable to bearer.

"The holder of this bond shall be entitled, at any time within ten years from the date hereof, to convert the principal sum into the stock of the said company, at par, on surrendering this bond, with the interest warrants not then due annexed.

"In testimony whereof, the said company have hereunto caused to be affixed their corporate seal, and these presents to be subscribed by their president and secretary, at Milwaukee, the first day of July, 1854.

"_____ _____, *President.*
"_____ _____, *Secretary.*

160 "I hereby certify that the La Crosse and Milwaukee Railroad Company have executed to me in trust the mortgage referred to in the foregoing bond, and that I have caused the same to be recorded in the several counties wherein said mortgaged premises are situated, and that the foregoing is one of the several bonds described in and secured by said mortgage.

"_____ _____, *Trustee.*"

Now, therefore, this indenture witnesseth, that the said La Crosse and Milwaukee Railroad Company, in consideration of the premises, and in order to secure the payment of the said bonds and interest thereon accruing, and in consideration of one dollar paid to the said company by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, transferred, and conveyed, and by these presents do grant, bargain, sell, transfer, and convey to the said party of the second part, his successor or successors in the trust hereby created, all their said road from its eastern termination, in the city of Milwaukee, to Portage City, in the county of Columbia, being ninety-five miles in distance, constructed and to be constructed, together with all and singular the railways, land procured or occupied or so to be for right of way within the limits aforesaid, together with

bridges, fences, privileges, rights, and real estate owned by said company for the purposes of said road, or which may be hereafter acquired or owned by them within the limits aforesaid, and all the tolls, income, issues, and profits to be had from the same, and all lands used for and occupied within the limits aforesaid by depots or stations, with all buildings standing thereon or which shall be procured therefor, together with all locomotives, engines, and tenders, passenger cars, and freight cars, shops, tools, and machinery, now owned or hereafter to be acquired by said company, and in any way belonging or appertaining to said railroad, now constructed and to be constructed within the limits aforesaid, including all its property, real and personal, pertaining to said railroad, within said limits, and all its rights, credits, and franchises thereunto appertaining. But nothing herein contained shall be so construed as to prevent the said parties of the first part from selling, hypothecating or otherwise disposing of any city or county bonds or other securities received in payment of stock or otherwise, or of any lands or other pro-
161 perty of said company not necessary to be retained for the roadway, depots, and stations nor required for the construction or convenient use of that part of said road, nor from collecting moneys due said company on stock subscription or otherwise, nor shall anything herein contained be so construed as to prevent the said parties of the first part from collecting and appropriating towards the construction, use, and repair of the remaining parts of said road westward towards the Mississippi river, all stock subscriptions, donations or loans of money, lands or other property which may have been or may hereafter be made for that purpose, but said parties of the first part shall have full right so to proceed, without let or hindrance from the said party of the second part. And the remaining portion of the said railroad which by the said parties of the first part may be so constructed, shall be held in use by the said parties of the first part, to their own behoof and benefit forever, so far as the claims of the said party of the second part, or his successors, might otherwise be construed as in conflict therewith. It being distinctly understood that the conveyance made by this indenture is only for so much of the present or hereafter to be acquired rights, interest, and property of the said company, parties of the first part, as are or shall be vested or belong or appertain to that part of said railroad extending from the city of Milwaukee to Portage City aforesaid, and being in distance ninety-five miles. To have and to hold the said premises, and every part thereof, with the appurtenances, unto the said party of the second part, his successors in said trust, and assigns, upon the following trusts, that is to say: In case the said parties of the first part shall fail to pay the principal or any part thereof, or any of the interest or any of said bonds at any time when the same may become due and payable, according to the tenor thereof, when demanded, then after sixty days after such default, (in case such principal or interest shall then remain unpaid,) upon request of the holder of such bond, it shall and may be lawful for the said party of the second part, his successor in said trust, or assigns, at his or their discretion, to enter into and upon and take

possession of all and singular the whole or any part of the property and effects, mortgaged as above expressed, or so intended to be, and as the attorney in fact, or agent of the said parties of the first part, by himself or agents or substitutes, duly constituted, have and, in his or their discretion, use and employ the same, making from time to time all such repairs, alterations and additions thereto
162 as he or they may deem necessary, and receiving the tolls, rents, issues and profits of said part of said railroad and appurtenances, and after deducting the expenses of such use, repairs, alterations and additions, apply the proceeds thereof to the payment of the principal and interest of all said bonds remaining unpaid, or the said party of the second part, his successor in said trust, and assigns, at his or their discretion, may, or on the written request of the holders of at least one-half of the bonds then unpaid and unconverted into stock, shall cause the said premises, property and effects hereby mortgaged, or intended so to be, or so much thereof as shall be necessary to pay and discharge the principal and interest of all such of said bonds as may then be unpaid and unconverted as aforesaid, to be sold at public auction, in the city of Milwaukee, in the State of Wisconsin aforesaid, or in the city of New York, giving at least forty days' notice of the time, place and terms of such sale, and of the specific property to be sold, by publishing the same in two newspapers of good circulation in each of the cities aforesaid, and wherever else required by law, and execute to the purchaser or purchasers thereof a good and sufficient deed of conveyance in fee simple of said premises, and such other instruments as may be necessary or proper for the property or effects so sold, which shall be a bar against the parties of the first part, their successors and assigns, and all persons claiming under them, of all right, interest or claim in or to said premises, property or effects, or any part thereof. And said trustees shall, after deducting from the proceeds of said sale the costs and expenses thereof and of managing such property, apply so much of the proceeds as may be necessary to the payment of said principal and interest due or unpaid on said bonds, and shall restore the residue thereof to the parties of the first part, it being hereby expressly understood that in no case shall any claim or advantage be taken of any valuation, appraisement or extension laws by the said parties of the first part, nor any injunction or stay of proceedings, or any process be applied for or obtained by them to prevent such entry or sale as aforesaid. And the said parties of the first part hereby covenant for the consideration aforesaid to execute and deliver any further reasonable and necessary conveyance of the premises, property or effects hereby mortgaged, or intended so to be, or any part thereof, to the said party of the second part, his successor in said trust, and assigns, for more fully carrying into effect the objects hereof, particularly for the
163 conveyance of any property or effects subsequently to the date hereof acquired by said parties of the first part, and hereby intended to be mortgaged as hereinbefore expressed; and the said parties of the first part hereby further covenant as aforesaid that the money borrowed for the purposes aforesaid, upon the secur-

ity of said bonds, chall be faithfully applied to the purchase and transportation of iron rails and machinery for the construction and extension of said road, and the expenses attending such loan and purchase, and that said rails and machinery so purchased shall be transported and used with due diligence in the construction, finishing and furnishing of said railroad; and it is hereby mutually agreed, and these presents are upon this express condition, that on the payment of principal and interest of said bonds at the times therein specified for the payment thereof, or the conversion thereof into stock in manner aforesaid, the estate hereby granted to the said party of the second part shall be void, and the right to the premises, property and effects hereby conveyed or granted shall revert to and revest in the said parties of the first part, without any acknowledgment of satisfaction, reconveyance, re-entry or other act.

And it is also further mutually agreed that the said party of the second part, his successors in said trust, and assigns, shall only be accountable for reasonable diligence in the management thereof, and shall not be responsible for the acts of any agents employed by him or them, when such agent is selected with reasonable discretion; and that said party of the second part, his successor in said trust, or assigns, shall be entitled to receive proper compensation for any labor or services performed by him in the discharge of his trust in case he shall be compelled to take possession of said premises, or any part thereof, or manage the same. And it is further mutually agreed, that in case of the death, mental incapacity, or resignation of the said party of the second part, all his estate, right and interest, power and control in the premises, property and effects aforesaid shall be divested, cease and determine, and the same shall from thenceforth for the purposes aforesaid be vested in, and all and singular the trusts and duties hereinbefore mentioned and enumerated shall devolve upon, Isaac Seymour, of the city of New York, if he shall be living, without any further or other assurance or conveyance of or for the same; and in case of the mental incapacity, death or resignation of the said Isaac Seymour after the trust hereby created shall have devolved on him, the said parties of the first part shall, or in
164 their default to take proceedings therefor for thirty days, the holders of a majority of said bonds may apply to the supreme court of the State of Wisconsin to appoint a new trustee, being a resident of the city of New York, to supply his place, and thereupon such new trustee shall become vested for the purposes aforesaid with all the rights and interest hereby conveyed to, or vested in, the said party of the second part, without any further assurance or conveyance for the same; but if the same shall be necessary, both or either of the parties hereto shall execute any necessary releases or conveyances for the purpose.

In witness whereof, the parties of the first part have caused their corporate seal to be hereto affixed, and these presents to be subscribed

by their president, and the said party of the second part has set his hand and seal the day and year first above written.

STODDARD JUDD, *President.* [SEAL.]

Signed, sealed and delivered in presence of—
ROBERT E. GILLET.
J. H. BURNELL.

FRANCIS A. PALMER. [SEAL.]

Sealed and delivered in presence of—
GEO. C. PETERS.
LEWIS N. GLOVER.

STATE OF NEW YORK, *City and County of New York, ss:*

I, Lewis N. Glover, residing in the said city of New York, duly appointed by the governor of the State of Wisconsin a commissioner for said State of Wisconsin in and for the State of New York, duly sworn and qualified to take testimony, acknowledgments, &c., to be used or recorded in said State of Wisconsin, do, by this instrument, given under my hand and official seal, certify that on this thirtieth day of June, A. D. eighteen hundred and fifty-four, before me personally appeared Francis A. Palmer, known to me to be the same person who executed the foregoing instrument, and the said Francis A. Palmer acknowledged the signing and sealing of the said instrument to be his voluntary act and deed.

In witness whereof, I have hereunto set my hand and official seal the day and year last above written.

LEWIS N. GLOVER, [SEAL.]
Commissioner for Wisconsin in New York.

165 STATE OF WISCONSIN, *City and County of Milwaukee, ss:*

On this fifth day of July, A. D. 1854, before me, Robert E. Gillet, a notary public in and for said county of Milwaukee, and State of Wisconsin, personally came Stoddard Judd, the president of the La Crosse and Milwaukee Railroad Company, to me known, being by me duly sworn, did depose and say that he resides in the town of Fox Lake, county of Dodge, in the aforesaid State of Wisconsin, that he is the president of the La Crosse and Milwaukee Railroad Company, that he knows the corporate seal of the said railroad company, that the seal affixed to the above and foregoing instruments, in writing, is such corporate seal, that it was so affixed by order of the board of directors of said railroad company, and that he signed his name thereto by like order, as president of the said railroad company.

In witness whereof, I have hereto subscribed my name, and affixed my notarial seal this fifth day of July, A. D. 1854.

ROBERT E. GILLET, [SEAL.]
Notary Public, residing in the County of Milwaukee, State of Wisconsin.

Recorded July 5th, A. D. 1854, at 10 o'clock a. m.

166 *Exhibit No. —.—Supplemental mortgage to Francis A. Palmer.*

This indenture, made this eighteenth day of February, A. D. one thousand eight hundred and fifty-six, by and between the La Crosse and Milwaukee Railroad Company, a corporation duly constituted as such by the laws of the State of Wisconsin, parties of the first part, and Francis A. Palmer, of the city, county and State of New York, party of the second part. Whereas, the parties of the first part have heretofore duly executed and delivered to the party of the second part their certain indenture of mortgage covering all their real and personal property and estate appertaining to the eastern line or section of their road, extending from the city of Milwaukee to Portage city, and being about ninety-five miles in length, which mortgage bears date on the thirtieth day of June, A. D. one thousand eight hundred and fifty-four, and has been duly recorded in the office of the register of deeds in the several counties through which said road runs, the same having been made to the party of the second part in trust, to secure the payment of the principal and interest of certain first mortgage eight per cent. coupon bonds of the said company of the denominations of one thousand dollars and five hundred dollars, bearing date the first day of July, A. D. one thousand eight hundred and fifty-four, and becoming due on the first day of November, A. D. one thousand eight hundred and seventy-four, respectively, with the interest thereon from date, at the rate of eight per cent. per
167 annum, payable half yearly thereafter, which bonds amount in the aggregate to nine hundred and fifty thousand dollars, and which the said company by virtue of the said mortgage contemplated to issue and negotiate for the purpose of raising money from time to time as the same might be wanted to aid in the construction of their said eastern line or section of road from the city of Milwaukee to Portage city, as by reference to the said mortgage or the record thereof more fully and at large appear; and whereas the said company have heretofore issued and sold a portion of the said bonds thus secured, amounting to four hundred and fifty thousand dollars, two hundred and forty of which are for the sum of one thousand dollars each, and numbered from number one to number sixty-four inclusive, number seventy to number ninety inclusive, number ninety-six to number one hundred, inclusive, and number one hundred and fifty-one to number three hundred inclusive, and four hundred and twenty of which are for the sum of five hundred dollars each, and numbered from number one to number four hundred and twenty inclusive, and have built and equipped about sixty-one miles of the said eastern line or section of their road, leaving on hand and in their possession unsold the residue of said bonds authorized to be issued under the said mortgage, amounting to five hundred thousand dollars, two hundred and sixty of which are for the sum of one thousand dollars each, and numbered from number sixty-five to number sixty-nine inclusive, from number ninety-one to number ninety-five inclusive, from number one hundred and one to number one hundred and fifty inclusive, and from number three hundred and one to number five hundred inclusive, and four hundred and eighty of which are for the sum of five hundred dollars each,

and numbered from number four hundred and twenty-one to number nine hundred inclusive, and which the company contemplate to sell and negotiate for the purpose of raising means to aid in finishing the remainder of their said eastern section or line of road; and whereas, in order to render the said residue of bonds more valuable by giving additional security for their ultimate payment and redemption, the said company have, by a resolution by their board of directors, duly passed on the sixth day of February, A. D. one thousand eight hundred and fifty-six, authorized and directed the creation of a sinking fund for that purpose, in manner and form as hereinafter provided, by annually setting apart from the net earnings of the road, and
168 depositing with the United States Trust Company of the city of New York for the next nineteen years the sum of twelve thousand dollars, which principal sum, together with the accumulations of interest, will form a capital sufficient to pay and satisfy the principal of the said residue of mortgage bonds; two hundred and sixty of which are for the sum of one thousand dollars each, and numbered from number sixty-five to number sixty-nine inclusive, from number ninety-one to number ninety-five inclusive, from number one hundred and one to number one hundred and fifty inclusive, and from number three hundred and one to number five hundred inclusive, as aforesaid, and four hundred and eighty of which are for the sum of five hundred dollars each, and numbered from number four hundred and twenty-one to number nine hundred inclusive, as aforesaid, on or before the maturity thereof.

Now, therefore, this indenture witnesseth, that the said parties of the first part, in addition to the several powers, covenants, liens, conditions and agreements contained in the aforesaid indenture of mortgage heretofore executed and delivered as aforesaid, and as supplementary thereto for the considerations aforesaid, and for and in consideration of one dollar to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, have covenanted, promised and agreed, and hereby do covenant, promise and agree to and with the said party of the second part, his successor and successors in the trust hereby created, and assigns, that for the further security and ultimate redemption of the said residue of the said mortgage bonds issued under the said mortgage, two hundred and sixty of which are for the sum of one thousand dollars each, and numbered from number sixty-five to number sixty-nine inclusive, from number ninety-one to number ninety-five inclusive, from number one hundred and one to number one hundred and fifty inclusive, and from number three hundred and one to number five hundred inclusive, and four hundred and eighty of which are for the sum of five hundred dollars each, and numbered from number four hundred and twenty-one to number nine hundred inclusive, and amounting in the aggregate to five hundred thousand dollars. They will annually, on or before the first day of November in each year hereafter, until the principal of the said residue of said mortgage bonds shall be fully paid, set apart and appropriate from the net earnings of the said road for the preceding twelve months, and deposit with the United States trust company of

New York, (an incorporated institution, located and doing business in the city of New York,) or its successors, which said
169 United States trust company of New York, or its successors, is hereby made, constituted and appointed the trustee or receiver of the parties hereto, and of all the holders of the residue of the said mortgage bonds, amounting to five hundred thousand dollars, and numbered as last aforesaid, issued by virtue of the aforesaid mortgage as aforesaid, for the purposes hereinbefore mentioned, the just and full sum of twelve thousand dollars, which, together with the accumulations of interest thereon, will form a capital sufficient to pay and discharge the entire principal of the residue of the said mortgage bonds, amounting to five hundred thousand dollars, and numbered as last aforesaid, issued by virtue of the aforesaid mortgage, on or before the maturity of the said last mentioned bonds; the first setting apart and appropriation of said sinking fund to be made and deposited on the first day of November, A. D. one thousand eight hundred and fifty-six, and the said sinking fund, or several sums of money thus set apart and appropriated, with all accumulations of interest, shall, as soon as practicable thereafter, be laid out and invested by the said United States Trust Company or its successor, in the purchase of the residue of the said mortgage bonds of the parties of the first part, before referred to and mentioned, two hundred and sixty of which are of the sum of one thousand dollars each, and numbered from number sixty-five to number sixty-nine inclusive, from number ninety-one to number ninety-five inclusive, from number one hundred and one to number one hundred and fifty inclusive, and from number three hundred and one to number five hundred inclusive, and four hundred and eighty of which are for the sum of five hundred dollars each, and numbered from number four hundred and twenty-one to number nine hundred inclusive, issued under the aforesaid mortgage, whenever any or either of the said mortgage bonds can be purchased at or under par, and the accrued interest on the same, at the date of the purchase. In case the securities of the said company before specified cannot be procured or purchased on the terms aforesaid, then, and in that case, the United States Trust Company, or its successor, shall, from time to time, invest the said funds under the advice and direction of the board of directors of the party of the first part, in such securities as shall be deemed most safe and profitable for the parties of the first part, provided, however, that the obligations of the parties of the
first part to make such annual deposits to the said sinking
170 fund as aforesaid, shall cease and determine so soon as the funds and securities placed in the hands of the said United States Trust Company, or its successor, shall, with the accumulations of interest thereon, form a capital sufficient to pay and discharge at the maturity thereof all the outstanding unconverted bonds, numbered as last aforesaid, issued under the said mortgage. The said United States Trust Company, or its successors, shall at all times keep a proper and correct registry and account of the said several securities and funds to be held by them as aforesaid, and belonging to the said sinking fund, for the inspection and examination of

the parties hereto, and of any of the stockholders or bondholders of the road, and shall annually hereafter, during the continuance of the said trust, render to the parties hereto a written statement, showing the true state and condition of the said sinking fund, and when any of the aforesaid securities of the parties of the first part shall have been purchased for the use of the sinking fund, the same shall as soon as purchased be cut, cancelled, and retired by the said United States Trust Company, or its successor, and be held and returned by them at the expiration of their trust.

The interest coupons on said purchased bonds are, however, to be regularly paid to the said United States Trust Company, or its successor, by the parties of the first part, in the same manner as if held and owned by a third party for value, and in case of the resignation of the said United States Trust Company as such trustee or receiver, or of its successor, or otherwise, the parties of the first part hereby reserve the right to supersede and revoke the aforesaid appointment of the said United States Trust Company, or its successor, and from time to time to appoint and substitute as a new trustee or receiver any other incorporated institution, located and doing business in the said city of New York, and deemed by them fit and suitable for that purpose; and said new trustee or receiver, or the successor thereof, shall be vested with all the right, estate, powers, and privileges hereby conveyed to or vested in the said United States Trust Company. And the said United States Trust Company, or its successor, shall, upon request, forwith assign, transfer, and deliver to such substituted trustee or receiver all the funds, property, and securities belonging to the said sinking fund so deposited with and held by them as aforesaid. The said United States Trust Company, or its successor, shall apply the funds and available securities in their
171 hands to the payment and redemption of the said residue of unsold mortgage bonds; two hundred and sixty of which are for the sum of one thousand dollars each, and numbered from No. 65 to No. 69 inclusive; from No. 91 to No. 95, inclusive; from No. 101 to No. 150 inclusive, and from No. 301 to No. 500, inclusive; and four hundred and eighty of which are for the sum of five hundred dollars each, and numbered from No. 421 to No. 900, inclusive; at their maturity rendering the overplus, if any, to the parties of the first part, or their assigns, and in case the parties of the first part shall fail, neglect, or refuse to set apart, appropriate, and deposit with the said United States Trust Company, or its successor, the said several sums of money, or any or either of them, for the purpose of a sinking fund, at the times and in the manner hereinbefore particularly set forth and provided, then, at the expiration of sixty days from and after such default, failure, neglect, or refusal, in case such payment and appropriation to the said sinking fund shall not have been made upon the request of the holder of any of the residue of such mortgage bonds, two hundred and sixty of which are for the sum of one thousand dollars each, and numbered from number sixty-five to number sixty-nine, inclusive; from No. 91 to No. 95, inclusive; from No. 101 to No. 150, inclusive; and from No. 301 to No. 500, inclu-

sive, and four hundred and eighty of which are for the sum of five hundred dollars each, and numbered from No. 421 to No. 900, inclusive, or upon the request of the said United States Trust Company, or its successor, the said party of the second part, his successor or successors in the trust hereby created, or assigns, may enter into and upon, and take possession of all or any part of said premises, real and personal estate and property, and as the attorney in fact or the agent of the said parties of the first part, by himself or agents or substitutes, duly constituted, have, use, and employ the same, making from time to time all needful repairs, alterations, and addition thereto, and after deducting the expenses of such use, repairs, alterations, and additions, apply the proceeds thereof to the payment of the principal and interest of the residue of the said bonds, numbered as last aforesaid, and issued under the said mortgage remaining unpaid, and the said party of the second part, his successor or successors in the trust hereby created, or assigns, on the written request of the holders of at least one-half of the said residue of
172 the said mortgage bonds, numbered as last aforesaid, issued under the said mortgage then outstanding, unpaid or unconverted into stock and not purchased and deposited for the sinking fund as aforesaid, shall cause the said premises, real and personal estate, and property, rights, and franchises, or so much thereof as shall be necessary to pay and discharge the principal and interest of all the said residue of such mortgage bonds, numbered as last aforesaid, as may be then unpaid and unconverted, and not purchased and deposited as aforesaid, to be sold at public auction in the city of Milwaukee, in the State of Wisconsin aforesaid, or in the city of New York, giving at least ninety days' previous notice of the time, place, and terms of such sale, and of the real and personal property and estate, rights and franchises to be sold, by publishing the same in two newspapers of good circulation in each of the cities of Milwaukee and New York aforesaid, and wherever else required by law, and execute and deliver to the purchaser or purchasers thereof a good and sufficient deed of conveyance in fee simple for the same, which shall be a bar against the parties of the first part, their successors and assigns, and all persons claiming under them, of all right, interest, and claim, of, in, or to said premises, real and personal estate and property, right, and franchises, or any part thereof. The amount of the bids or purchase money on the said sale may be paid and satisfied in whole or in part by the residue of the said outstanding mortgage bonds, numbered as last aforesaid, or any of them, and the same shall be taken or received in whole or in part payment and satisfaction by the party of the second part, his successor or successors in the trust hereby created, or assigns, according to their value, to be ascertained and determined by the net amount arising from said sale, together with the amount of unapplied cash assets belonging to the sinking fund, as compared to the amount of the outstanding unconverted and unpurchased residue of said bonds, numbered as last aforesaid, issued under the said mortgage as aforesaid. And the said party of the second part shall, after deducting from the proceeds of said

sale the costs and expenses thereof and of managing such property, apply so much of the proceeds as may be necessary to the payment of said principal and interest due and unpaid on the residue of the said outstanding mortgage bonds, numbered as last aforesaid, issued under the said mortgage, and not converted nor purchased for the sinking fund, nor used in payment of such bid as aforesaid,
173 and shall pay over and restore the remainder of said proceeds to the parties of the first part, their successors or assigns. It being hereby expressly understood that in no case shall any claim or advantage be taken of any valuation, appraisement, or extension laws by the said party of the first part, nor any injunction or stay of proceedings or any process be applied for or obtained by them to prevent such entry or sale as aforesaid. And the said parties of the first part hereby covenant, for the considerations aforesaid, to execute and deliver any further reasonable and necessary conveyance or conveyances of the premises or any part thereof, to the said party of the second part, his successor or successors, in the trust hereby created, or assigns, for more fully carrying into effect the objects hereof, particularly for the conveyance of any rights, interests, or property subsequently to the date hereof, acquired by said parties of the first part, and comprehended, or intended to be, in the description and terms of this instrument.

And the said parties of the first part hereby further covenant, as aforesaid, that the money borrowed for the purpose aforesaid, upon the security of the residue of the said mortgage bonds, numbered as last aforesaid, issued under the said mortgage, shall be faithfully applied for the purchase and transportation of iron rails and machinery, and for the construction and extension of said road, and the expenses attending such loan and purchase, and that said rails and machinery so purchased shall be transported and used with due diligence in the construction, finishing, and furnishing said railroad. And it is mutually agreed, and these presents are upon the express condition, that upon the payment of the principal and interest of the residue of the said mortgage bonds, numbered as last aforesaid, and issued under the said mortgage, or on the conversion thereof into stock in manner aforesaid, the powers, rights, and estate hereby granted to the party of the second part, his successor or successors in the trust hereby created or assigned, shall be void, and when the principal and interest of all the residue of the said mortgage bonds issued under the said mortgage shall be fully paid, and the residue of said bonds, numbered as last aforesaid, duly cancelled, the said party of the second part, his successor or successors, on the trust hereby created, or assigns, shall, upon the request of the parties of the first year or their assigns, duly execute and acknowledge the payment and
174 satisfaction of the agreement, and shall deliver up the same to the parties of the first part or their assigns to the end that the same may be duly and properly satisfied, cancelled, and discharged of record. And it is also further mutually agreed that the said party of the second part, his successor or successors in the trust hereby created, or assigns it shall be accountable only for reasonable

diligence in the management of the several trusts and matters herein and hereby committed to his and their care, control and authority, and shall not be responsible for the act of any agent or attorney employed by him or them, where such agent or attorney is selected with reasonable discretion, and the said party of the second part, his successor or successors in the trust hereby created, shall be entitled to receive proper compensation for any labor or service performed by him or them in the discharge of his trust in case he or they shall be compelled to take possession of said premises and real and personal property and estate, or any part thereof, or to manage the same, and it is further mutually agreed that in case of the death, mental or civil incapacity, or resignation of the party of the second part, all his estate, right, interest, power, and control in the premises shall be divested, cease and determine, and the said parties of the first part shall, or in their default to take proceedings thereof for thirty days, the holders of a majority of the outstanding mortgage bonds issued under the said mortgage may apply to the supreme court of the State of Wisconsin, to appoint in his place a new trustee, being a resident of the city of New York, and thereupon, and upon his acceptance of the trust, such new trustee shall become vested for the purposes aforesaid with all the rights, estate, property and interest hereby conveyed to or vested in the said party of the second part, without any further assurance or conveyance of the same. But if the same shall be necessary, both or either of the parties hereto shall execute and deliver any other or further releases, agreements or conveyances for that purpose, to the end that the true intent, object and meaning of this instrument may be fully and faithfully carried into effect.

In witness whereof the said parties of the first part, on the day and year first aforesaid by order of the board of directors have hereto caused to be affixed their corporate seal, and these presents to be signed by their president, and countersigned by their secretary, at Milwaukee, Wisconsin, and the said party of the second part
175 has also hereunto set his hand and seal.

BYRON KILBOURN,
President of the La Crosse and Milwaukee Railroad Company.

F. A. PALMER, *Trustee.* [SEAL.]

Attest:

LEVI BURNELL, *Sec'y.* [CORPORATE SEAL.]

The words "numbered as last aforesaid" interlined between 11th and 12th lines of 5th page, before execution.

In presence of—
NELSON MCNEAL,
CHARLES E. JENKINS.

Witnesses to signature of F. A. Palmer, trustee.
W. A. WOODWARD,
JOHN J. HILL.

STATE OF WISCONSIN, *Milwaukee County, ss* :

On the 18th day of February, 1856, came before me Byron Kilbourn, president of the La Crosse and Milwaukee Railroad Company, and Levi Burnell, secretary of said company, to me personally known, and severally acknowledged that they had executed the foregoing conveyance, written instrument, for the uses and purposes therein expressed.

CHAS. E. JENKINS.
County Judge, Milw. Co., Wis.

STATE OF WISCONSIN, *County Court, Milwaukee County, ss*:

I, Matthew Keenan, clerk of said court, do hereby certify that the Hon. Chas. E. Jenkins, whose name appears above, and before whom the foregoing acknowledgment was made, was, at the date thereof, and now is, acting judge of the county court aforesaid, duly elected and qualified, and further, that I am well acquainted with the handwriting of said judge, and verily believe the signature purporting to be his is genuine.

In testimony hereunto, set my hand and affixed the seal of said court, this 18th day of February, A. D. 1856.

[SEAL.] MATTHEW KEENAN, *Clerk.*

176 NEW YORK CITY, *County and State, ss:*

On this 20th day of February, 1856, before the undersigned, a commissioner in and for the said State, residing in the city of New York, appointed by the governor of the State of Wisconsin, under the laws of said State, with full power and authority to take the acknowledgment and proof of deeds, and to be used or recorded in said State of Wisconsin, appeared Francis A. Palmer, known to me to be the person named in the foregoing indenture, and acknowledged that he executed the same freely as his act and deed, as trustee, for the uses and purposes therein mentioned.

Witness my hand and official seal.

[SEAL.] W. A. WOODWARD,
Commissioner of Wisconsin in New York.

Recorded March 17, 1856, at 8 o'clock a. m.

177 *Exhibit No.—. Land grant mortgage.*

Deed of trust, made this thirty-first day of December, in the year of our Lord one thousand eight hundred and fifty-six, (1856,) between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, party of the first part, and Greene C. Bronson, James T. Soutter, and Shepherd Knapp, trustees, as after mentioned, all of the city and State of New York, parties of the second part.

Whereas, the Congress of the United States, by an act approved June 3, 1856, entitled "An Act granting public lands to the State of Wisconsin, to aid in the construction of railroads in said State," did enact as follows :

(Here follows said act.)

And whereas, the legislature of said State of Wisconsin subsequently passed an act, approved October 11th, 1858, which is in the following words:

"An Act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust created by an act of Congress, entitled 'An Act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State,'" approved June 3, 1856.

(Here follows said act.)

And whereas, the said railroad company, after the passing of said last-mentioned act, and on the same day, duly accepted the same by a resolution adopted by the directors of said company, a copy of which, certified by the secretary of said company, under its
178 corporate seal, was on the same day deposited in the office of the secretary of State.

And whereas, said railroad company, for the purpose of constructing its road from Madison, by way of Portage City, to St. Croix river or lake, has determined to borrow a sum of money not exceeding ten million of dollars, and to issue its bonds for the repayment of the moneys which may be borrowed, with the interest thereon; nine thousand of which bonds (exclusive of the numbering and interest warrants or coupons) will be substantially in the following form:

"UNITED STATES OF AMERICA, *State of Wisconsin, ss:*

"The La Crosse and Milwaukee Railroad Company.

"Know all men by these presents, that the La Crosse and Milwaukee Railroad Company acknowledge themselves to be indebted to the bearer hereof in the sum of one thousand dollars, lawful money of the United States, for money borrowed for the construction of their road from Madison to the St. Croix river or lake, which sum they agree to pay to the bearer hereof, on the first day of February, in the year of our Lord 1877, at the Bank of the Republic, in the city of New York, with interest at the rate of seven per centum per annum, payable in the city of New York, semi-annually, on the first day of February and the first day of August in each year, on presentation and delivery of the interest warrants or coupons hereto annexed. Said railroad company reserves the right to satisfy and discharge this bond at any time before the principal becomes due, by paying to the holder thereof the sum of eleven hundred dollars, with the interest up to the time of such payment, so far as the same may not have been previously paid. This is one of nine thousand bonds, all of the same tenor, and numbered from 1 to 9,000 respectively, which, with two thousand bonds for the sum of five hundred dollars each, numbered from 1 to 2,000 respectively, make in the aggregate the sum of ten millions of dollars; to secure the payment of all which bonds, a deed of trust has been executed by said railroad company to Greene C. Bronson, James T. Soutter, and Shepherd Knapp, conveying all such interest as said railroad company has acquired, or may hereafter acquire,

in all the land granted to said railroad company by the act of the legislature of the State of Wisconsin, approved October 11, 1856, entitled "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust created by an act of Congress, entitled 'An act granting certain lands to the State of Wisconsin
179 to aid in the construction of railroads in said State,'" approved June 3d, 1856, so far as the lands granted by said act of the legislature are applicable to the construction of the road of said railroad company from Madison, by way of Portage City, to St. Croix river or lake, estimated to be about one million of acres; and also conveying all such interest as said railroad company has acquired, or hereafter may acquire, in said road from Madison to St. Croix river or lake, and in the road from Portage City to La Crosse, with all the equipments and other things pertaining to said roads. Reference to which trust deed, bearing date the day of December, 1856, and reciting the said acts of Congress and the legislature, is hereby had and made for a more full description of said lands, roads, and other property, and the interest thereby conveyed to said trustees.

"In witness whereof, said railroad company has hereto affixed its corporate seal, with the names of its president and secretary, the first day of February, in the year of our Lord 1857.

[SEAL.] "———— ————, *President.*
"———— ————, *Secretary.*

"Registered and countersigned by the trustees this day of , 185 .

"———— ————, *Trustees.*"

And two thousand of which bonds will be in the like form, but for the sum of five hundred dollars each.

And whereas said railroad company has determined to secure the payments of such bonds as may be issued as aforesaid, in the manner herein provided:

Now, therefore, this deed witnesseth: That the said railroad company, in consideration of the premises and of the sum of one dollar paid by said parties of the second part, has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm unto said parties of the second part, all and singular the several tracts, pieces or parcels of land which now are, or may hereafter be, or constitute the site of the roadway, turnouts engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which now constitute, or may
180 hereafter constitute or be a part of the roads of said railroad company from Madison, by way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from Portage City to La Crosse; and also all and singular the superstructure of said roads, whether now made or to be made hereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or pertaining to said roads, whether now built and made, or to be built and made hereafter. And also, all

and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description, which have already been or may hereafter be procured for or used on said roads, or either of them, and all the materials, tools, implements, utensils, and other personal property, which have been, or may hereafter be procured for or used in connection with said roads, or either of them; and also, all and singular the rights, liberties, privileges, and franchises of said railroad company, of every kind and description, relating to said roads.

And furthermore, and upon the consideration aforesaid, the said railroad company has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm unto said parties of the second part all and singular the lands granted, or intended to be granted, to said railroad company, under or by virtue of the act of Congress and the act of the legislature of Wisconsin, hereinbefore mentioned, so far as the said lands pertain, or are applicable to the construction of said roads from Madison, by way of Portage City, to the St. Croix river or lake, estimated to be about one million of acres of land: together with all and singular the hereditaments and appurtenances belonging or in anywise appertaining to the lands and real estate hereby conveyed, or intended to be conveyed; and it is hereby declared to be the intention of the parties to these presents to convey to and vest in said parties of the second part all the property, real and personal, of said railroad company to be acquired hereafter, as well as that which has already been acquired, together with all the rights, liberties, privileges, and franchises of said railroad company in respect to the roads above mentioned, as fully and amply as the same might be conveyed if the said railroads had already been fully constructed and equipped, and the particular lands granted by the foregoing acts of Congress and
181 the legislature, so far as the same are applicable to the construction of said road from Madison to St. Croix river or lake, had already been designated and conveyed to said railroad company.

To have and to hold, all and singular, the property, real and personal, with the hereditaments and appurtenances, and all and singular the rights, liberties, privileges, and franchises hereby conveyed, or intended to be conveyed, to the said parties of the second part, and the survivors and survivor, successors and successor of them, and their and his heirs and assigns forever, as joint tenants, and not as tenants in common—in trust, nevertheless, and upon the trusts, terms, and conditions herein expressed.

First. Until default shall be made in the payment of said bonds, or some of them, or the interest thereon, said railroad company shall be suffered and permitted to possess, hold, and enjoy said roads from Madison to St. Croix river or lake, and from Portage City to La Crosse, with the equipments and all other things appertaining to said roads, and use the same, and take and receive the income and profits thereof, in the same manner as though this deed had not been made.

Second. When said road, from Madison to St. Croix river or lake, shall be surveyed and located, and the particular lands granted as aforesaid to aid in the construction thereof, shall be ascertained, said railroad company will make schedules of the several sections and parcels of said lands, and affix thereto the minimum prices at which the same are to be sold, which prices shall in the aggregate, for all of said lands, amount to the sum of ten millions of dollars at the least, and will furnish such schedules, duly certified by said railroad company, to said parties of the second part, together with an affidavit of the president and secretary of said railroad company, that, to the best of their knowledge, information, and belief, the minimum prices have been fairly affixed, having reference to the relative values of the different sections and parcels of land; and whenever said railroad company shall certify, in writing, to said trustees, that it has contracted for the sale of any section or parcel of said lands at a sum not less than the minimum price affixed to the same, and ten per centum at the least of the consideration money shall be paid to said trustees, and a bond and mortgage in the proper form from the purchaser to the trustees, securing the payment of the residue of the consideration money, with the interest thereon, as hereinafter men-
182 tioned, shall be delivered to said trustees, the mortgage having been first duly acknowledged and recorded. the said trustees will thereupon make, execute, and acknowledge a deed conveying to such purchaser, his heirs and assigns, all the right, title, interest, and estate of the said trustees of, in, and to the section or parcel of land so sold, with a covenant that they have not done any act, matter, or thing to defeat or prejudice their title to the lands so conveyed. The principal sum secured by the bond and mortgage of the purchaser must be made payable on or before the first day of February, one thousand eight hundred and seventy-five, and the interest thereon must be at the rate of seven per centum per annum, and be payable annually. The deed of the trustees to the purchaser will bear even date with the bond and mortgage, and will specify the true amount of consideration money, and the manner in which the same has been paid or secured. Sales may be made in like manner of any section or parcel of said lands at a less sum than the minimum price affixed to the same in such schedules, provided the president or secretary of said railroad company shall make and furnish to said trustees an affidavit that the price agreed on is, in his opinion, the full market value of the land so sold; and provided, also, that the aggregate sums on all sales then and previously made shall be equal to or above the aggregate for all the land sold as specified in said schedule.

Third. The consideration money on any such sale of land may be paid, either in whole or in part, by delivering to said trustees, to be cancelled, one or more of the bonds which may have been issued by the railroad company as aforesaid, at their par value; and payments upon any such mortgage as aforesaid may be made by delivering to said trustees one or more of such bonds of the railroad company as aforesaid at their par value; and two or more purchasers may unite and

pay a part or all of the aggregate amount of consideration money on their purchases, or a part or all of the aggregate amount of their mortgages in like manner.

Fourth. All money which may be received by said trustees, under or in pursuance of this trust, after deducting therefrom their compensation for accepting and executing the trust, and all costs, counsel fees, charges, and other expenses, shall constitute a sinking fund for the redemption and pay-
183 ment of the bonds, so to be issued by the railroad company as aforesaid, and shall be faithfully applied to that object; and until the money shall be so applied, the same shall be deposited in one of the trust companies in the city of New York, upon the best terms which can be procured for the same; and whenever there shall be any money so on deposit, said trustees may, in their discretion, apply the same to the purchase of the bonds which may have been issued by the railroad company as aforesaid, at their market value in the city of New York, provided such market value shall not exceed the par value thereof; and whenever the sum so on deposit shall exceed twenty-five thousand dollars, the surplus beyond that sum shall be so applied by said trustees; and in case a sufficient amount of bonds to absorb said surplus cannot be obtained at par in the city of New York, such trustees shall, on the written request of said railroad company, make purchase of bonds at a premium not exceeding ten per centum, if the same can be had in the New York market.

Fifth. Whenever the trustees shall receive any of the bonds above mentioned in payment for lands sold, or on mortgages, or shall purchase any bonds as above provided, the same, with any unpaid interest warrants or coupons annexed thereto, shall be immediately cancelled, and shall thereafter only be held as vouchers by said trustees.

Sixth. In case default for the space of sixty days shall be made in the payment of any of said interest warrants or coupons, as they respectively fall due, it shall thereupon be lawful, and said trustees are hereby authorized and empowered, in their discretion. to sell at public or private sale, for the best prices which can be obtained for the same, all or any portion of the lands mentioned in such schedule, for the purpose of obtaining the necessary funds to satisfy such default, and may appoint one or more agents or attorneys to make such sales, execute conveyances tothe purchasers, and receive the purchase money; and if the sum in default shall at any time be equal to the amount of the interest for one year on all the bonds then outstanding, and the same cannot be satisfied within a reasonable time, by such sales of lands, or if default shall be made in the payment of the principal sum of said bonds at maturity, said trustees may thereupon, in their discretion, either in person or by their attorney or attorneys, agent or agents, appointed for that purpose, enter
184 into, and upon, and take possession of all and singular the said road from Madison to the St. Croix river or lake, and from Portage City to La Crosse, and all the other property, real and personal, hereinbefore conveyed, or intended to be conveyed, and may

operate said road, and take and receive the income and profits thereof, and may sell all and singular the said roads, and all the other property, real and personal, hereby conveyed or intended to be conveyed, either at public or private sale, and execute and deliver to the purchaser or purchasers deeds and conveyances, which shall vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of said trustees, and said railroad company, of, in, or to said property, and every part and parcel thereof, including the rights, liberties, privileges, and franchises of said railroad company, in respect to the roads which may be sold as aforesaid; but before any sale of the said lands, or either of them, or the rights, liberties, privileges, or franchises, aforesaid, shall be made at auction, notice of such intended sale shall be published, once in each week for twelve weeks at the least, in two newspapers published in the city of New York, and in three newspapers at the least, published in the State of Wisconsin, one of which shall be published in the city of Milwaukee; and should any further notice be required by the laws of the State of Wisconsin, the same shall be given; and on the written request of the holder or holders of the major part in amount of the bonds then outstanding, the trustees shall proceed to sell and convey said property in the manner herein provided.

Seventh. The said railroad company will cause this deed to be duly recorded in all proper places, and will satisfy and discharge all taxes, charges, liens, and other burdens, which either exist or may hereafter be imposed or arise on the whole or any part of the property hereby conveyed or intended to be conveyed; and said trustees assume no duty or responsibility on those subjects, or in relation to any other matter, except as is herein provided.

Eighth. Said trustees may appoint all such attorneys, counsellors, clerks, and other agents, as they may deem proper in the execution of the trust, and shall not be answerable for the defaults or other misconduct of such attorneys, counsellors, clerks, or other agents, unless chargeable with culpable negligence in their selection; and
185 further, neither of the trustees shall be answerable for the acts, omissions, or defaults of his associates or associate, nor shall either of the trustees be responsible for anything short of gross negligence or wilful defaults in the discharge of his duties.

Ninth. This trust extends to such bonds, and such only, as shall be registered and countersigned by said trustees; and when all of said bonds shall be satisfied and discharged the trust shall cease. The trust shall also cease at the end of six calendar months after the principal moneys shall fall due, as to all such bonds as shall not then have been presented for payment; and whenever the trust shall determine, and any moneys which may be due to the trustees shall be paid, the trustees will reconvey to said railroad company all their rights, title, and interest of, in, and to all of said trust property, which may not have been previously disposed of in pursuance of the trust.

Tenth. All the powers and duties of the trustees may be executed and discharged by any two of them; and in case of the death, incapacity to serve, or resignation of any trustee, all the estate and in-

terest hereby created shall vest in the other trustees or trustee, as fully as if they or he only had been named in, and had enacted the deed.

The supreme court in the first judicial district of the State of New York may remove either of the trustees on the application of his associates, or of the railroad company, reasonable notice being first given to such trustee. Any trustee may resign his trust, thence forward be discharged from all further duty or obligation in relation to it, provided such resignation, after reasonable notice to the president or secretary of said railroad company and the other trustees shall be approved by said supreme court. If at any time there shall be only one trustee capable of acting, said supreme court, on reasonable notice to such trustee and said president or secretary, may appoint a new trustee, who shall thereupon acquire and have all rights, titles, interest, and authority under the trust, and subject to all duties and responsibilities in relation to the same as fully as though he had been originally named as a trustee, and had executed this deed.

Eleventh. Said railroad company will, from time to time, pay all such costs, charges, and expenses as the trustees may sustain or be put to in the execution of the trust, and keep them fully in-
186 demnified in the premises.

Said trustees hereby accept, and covenant, and agree to and with said railroad company, faithfully to execute said trust; and said railroad company hereby covenant and agree to and with said trustees, the survivors and survivor, successors and successor of them, that said railroad company will from time to time, during the continuance of the trust, make, execute, cause to be duly recorded, and deliver to said trustees, or to the persons who shall then be trustees, all such further conveyances and assurances, and will do all such further acts as may be either necessary or proper for more effectually vesting in said trustees all such rights, title, interest, or estates, both legal and equitable, as said railroad company now has, or may hereafter acquire, of, in, or to all and every part of the property hereby conveyed, or intended to be conveyed.

In witness whereof said railroad company has hereto affixed [SEAL.] its corporate seal, and caused the same to be subscribed by its president and secretary; and the trustees have subscribed their names and affixed their seals the day and year first above written.

BYRON KILBOURN, *President.*
EDWIN H. GOODRICH,
Secretary of the Railroad Company.

GREENE C. BRONSON,
JAMES T. SOUTTER,
SHEPHERD KNAPP, *Trustees.*

Witnesses as to Byron Kilbourn, president, and Edwin H. Goodrich' secretary:

E. MARINER.
S. H. ALDEN.

Witnesses as to Messrs. Soutter and Knapp:
J. S. ATWOOD.
JOHN BISSELL.

Witnesses for Greene C. Bronson, as to the execution of the foregoing instrument by him:
EDWARD WADE.
S. H. ALDEN.

187 *Exhibit No. —.—Deed to the city of Milwaukee of September 1st, 1853, securing the issue of city bonds.*

Milwaukee, Fond du Lac and Green Bay Railroad Company, to city of Milwaukee—mortgage.

This indenture, made the first day of September, in the year one thousand eight hundred and fifty-three, between the Milwaukee, Fond du Lac and Green Bay Railroad Company, a corporation duly constituted as such by the laws of the State of Wisconsin, parties of the first part, and Alexander H. Johnson, treasurer of the city of Milwaukee, in the State of Wisconsin, for the use and benefit of said city of Milwaukee, party of the second part. Whereas the said city of Milwaukee, pursuant to the terms of an act of the legislature of the State of Wisconsin, entitled "An act authorizing the city of Milwaukee to loan its credit in aid of certain railroads, approved April 2d, 1853," and of a certain other act of said legislature, entitled "An act to authorize the Milwaukee, Fond du Lac and Green Bay Railroad Companies to consolidate," approved June 27th, 1853, and of an ordinance of the common council of the city of Milwaukee, entitled "An ordinance authorizing an issue of city bonds to the Milwaukee and Fond du Lac Railroad Company," passed May 19th, 1853, and approved by the legal voters of said city, at an election held for that purpose according to law, on the 7th day of June, 1853, is to
188 issue and deliver to the said parties of the first part the negotiable corporate bonds of said city of Milwaukee in an amount or amounts not to exceed in all two hundred thousand dollars, payable twenty years from the date thereof, with interest, payable semi-annually, at the rate of seven per cent. per annum, both interest and principal payable at the Union Bank of New York, in the city of New York, as a loan by the said city to the said company, to aid in the construction of its railroad, under and in conformity with said acts and ordinance above mentioned. And the said Milwaukee, Fond du Lac and Green Bay Railroad Company, for the security and indemnity of the said city for said issue and delivery of its bonds as a loan to the said company as aforesaid, have this day executed to Alexander H. Johnson, treasurer of the said city of Milwaukee, and his successors in office, for the use and benefit of said city, the bond of said company, under the authority of its board of directors, signed by the president, and countersigned by the secretary of said company, under the corporate seal of said company, in the penal sum of four hundred thousand dollars, with the conditions and covenants therein, that said railroad company shall punctually pay and discharge the principal

and interest moneys of such bonds of said city as may be issued and delivered to the said company as a loan as aforesaid, as they shall severally become due, and shall also fully indemnify and save harmless the said city against all payments, liabilities, losses, damages, and expenses which it may incur or sustain in consequence of the issue or delivery of such bonds, or any portion thereof, according to the conditions of the said bond of the said company. Now, therefore, this indenture witnesseth, that the said parties of the first part, in order to secure the performance of the covenants and conditions of the said bond of the said company above stated, and in consideration of one dollar to them at the sealing and delivery hereof, in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, transferred and conveyed, and by these presents do grant, bargain, sell, transfer and convey to the said party of the second part, and his successors in office, for the use and benefit of said city of Milwaukee, all the following present, and in future to be acquired, property of the said parties of the first part, that is to say: The first section division of the railroad of said parties of the first part next to the city of Milwaukee, being and embracing that portion of said road commencing at the terminus of said railroad in the said city of Milwaukee
189 and extending northwesterly on the line of said road to a point forty miles distant from the said city of Milwaukee, in the State of Wisconsin aforesaid, including the right of way and land occupied, or to be occupied, by said road, together with the superstructure and tracks thereon, and all rails and other materials used thereon, sidetracks, bridges, viaducts, culverts, fences, equipments, depot grounds and buildings thereon, engines, tenders, cars, tools, machinery, fixtures, and all other personal property, right thereto and interest therein, together with the name and functions appertaining to the said road, tolls, rents, and income to be had or levied therefrom, and all franchises, rights, and privileges of the said parties of the first part, of, in, to or concerning the same, as well that hereafter to be acquired and constructed as that already acquired or constructed, under their said acts of incorporation, wherever the same may be, but nothing herein contained shall be construed to prevent the said parties of the first part from collecting and appropriating towards the construction, use, and repairs of the remaining parts of said road northward, all stock, subscriptions, donations, or loans of money, and all bonds or other property not included in the foregoing description and not intended to be embraced in this indenture, which may have been or may hereafter be made for that purpose, but said party of the first part shall have full right so to proceed without let or hindrance from the said party of the second part, and his successors in office. It being distinctly understood that the conveyance made by this indenture is only for so much of the present right, interest, and property, or in the future to be acquired rights, interest, and property of the said parties of the first part, as do or may exist on that part of said railroad extending from the city of Milwaukee a distance of forty miles northwesterly on the line thereof, in the State of Wis-

consin aforesaid. To have and to hold the said rights, property and premises, and every part thereof, with the appurtenances thereunto belonging, unto the said party of the second part, and his successors in office, for the use and benefit of said city of Milwaukee forever. And the said parties of the first part hereby covenant to and with the said party of the second part, that the said parties of the first part are well and truly seized of a good and perfect title to the premises above conveyed in the law, and have good right and lawful authority to convey the same, and that the title so conveyed is clear, free, and unincumbered, and that the said parties of the first part will forever warrant and defend the same to the party of the
190 second part, and his successors in office, for the use and benefit of said city against all claims whatsoever, except, and this conveyance is made by the said company and received by said party of the second part, subject only to a first and prior mortgage of the same rights, property, premises, and appurtenances above described, executed or to be executed thereupon for the sum not exceeding ten thousand dollars per mile for each and every mile of road embraced therein, and not exceeding in the aggregate four hundred thousand dollars. This conveyance is intended as a mortgage to secure the punctual payment and discharge of the principal and interest moneys of bonds of said city of Milwaukee, to be issued and delivered as a loan to the said parties of the first part, in an amount or amounts not to exceed in the aggregate two hundred thousand dollars, to aid in the construction of the Milwaukee, Fond du Lac and Green Bay Railroad as aforesaid, and to secure the faithful performance of all the covenants and conditions of the said bond of even date herewith above alluded to, and in case the said parties of the first part shall fail to pay the principal, or any part thereof, or any of the interest on any of the said bonds of the said city of Milwaukee, at any time when the same may become due and payable, according to the tenor thereof, or shall fail to perform any of the covenants and conditions of the said bond of said company, then the said party of the second part and his successors in office may at once enter into and take possession of all or any part of said premises and property for the use and benefit of said city of Milwaukee, and as the attorney in fact or agent of the said parties of the first part, by himself or agent or substitutes duly constituted, have, use, and employ the same, making from time to time all needful repairs, alterations, and additions thereto, and after deducting the expenses of such use, repairs, alterations, and additions, apply the proceeds thereof to the payment of so much of the principal and interest of all said city bonds as remain unpaid, and of all liabilities of the said parties of the first part upon their said bond, or the said party of the second part and his successors in office, at his or their discretion, may cause the said premises and property, or so much thereof as shall be necessary to pay and discharge the principal and interest of said city bonds, or so much thereof as may then be due and unpaid as aforesaid, and to indemnify and save harmless the said city from and against all liabilities, loss and expenses incurred in consequence of the issue of its said bonds, to

be sold at public auction in the city of Milwaukee, in the State of Wisconsin aforesaid, or in the city of New York, giving at
191 least forty days notice of the time, place and terms of such sale, and of the specific property to be sold, by publishing the same in two newspapers of good circulation in each of the cities aforesaid, and wherever else required by law, and execute to the purchaser or purchasers thereof at such sale a good and sufficient deed of conveyance in the law for the same, which shall be a bar against the parties of the first part, their successors and assigns, and all persons claiming under them, except the holder or holders of said first or prior mortgage, of all right, interest or claim, in or to said premises and property, or any part thereof. And said party of the second part shall, after deducting from the proceeds of said sale the costs and expenses thereof, and of managing said property, apply so much of the proceeds as may be necessary to the payment of said principal and interest due or unpaid on said bonds, and to the indemnity of the said city as aforesaid, and shall restore the residue thereof to the parties of the first part. It being hereby expressly understood, that in no case shall any claim or advantage be taken of any valuation, apprisement, or extension laws by the said parties of the first part, nor any injunction or stay of proceedings, or any process be applied for or obtained by them to prevent such entry or sale as aforesaid. And the said parties of the first part hereby covenant for the consideration aforesaid to execute and deliver any further reasonable and necessary conveyance of the said premises and property, or any part thereof, to the said party of the second part, and his successors in office, for the use and benefit of said city, for more fully carrying into effect the objects hereof, particularly the conveyance of any rights or property subsequently to the date hereof, acquired by said parties of the first part, and comprehended in the description hereinbefore contained. And the said parties of the first part hereby further covenant, for the consideration aforesaid, that the said city bonds so to be issued and delivered as a loan to the said parties of the first part as aforesaid, and all of said bonds, or the avails thereof, shall be faithfully applied to the construction and completion of the said first section or division of forty miles of said Milwaukee, Fond du Lac and Green Bay Railroad, next to said city of Milwaukee, and intended to be embraced within this indenture. And the said company do further covenant and agree that the said prior mortgage or lien upon said property and premises, in case of default in the performance of the covenants and conditions therein contained, shall not authorize the sale of said
192 mortgaged premises and property for such default without public notice of such sale being given in the manner required by law, and for at least sixty days prior to such sale. And these presents are upon this express condition, that on payment by said parties of the first part of the principal and interest of said city bonds, and on the full and complete performance by the said parties of the first part, of all the covenants and conditions of their said bond above referred to, and of this indenture, the estate hereby granted to the said party of the second part shall be void and the right to the premises

hereby conveyed shall revert to and revest in the said parties of the first part without any acknowledgment of satisfaction, re-conveyance, re-entry, or other acts.

In witness whereof, the said Milwaukee, Fond du Lac and Green Bay Railroad Company have caused their corporate seal to be hereto affixed, and these presents to be signed by their president and countersigned by their secretary, the day and year first above written.

[SEAL.] JAMES KNEELAND,
President Milwaukee, Fond Du Lac and Green Bay Railroad Company.
J. N. MASON,
Secretary.

193 *Exhibit No. —.—Deed to the city of Milwaukee of July 13th, 1854, securing the issue of city bonds*—$200,000.

La Crosse and Milwaukee Railroad Company, to the city of Milwaukee—mortgage.

This indenture, made the thirteenth day of July, in the year one thousand eight hundred and fifty-four, between the La Crosse and Milwaukee Railroad Company, a corporation duly constituted as such by the laws of the State of Wisconsin, parties of the first part, and Ferdinand Kuehn, treasurer of the city of Milwaukee, in the State of Wisconsin, for the use and benefit of the said city of Milwaukee, party of the second part.

Whereas, the said city of Milwaukee, pursuant to the terms of an act of the legislature of the State of Wisconsin, entitled "An act authorizing the city of Milwaukee to loan its credit in aid of certain railroads," approved April 2d, 1853, and of an ordinance of the common council of the city of Milwaukee, entitled "An ordinance authorizing an issue of city bonds to the La Crosse and Milwaukee Railroad Company," passed June 2d, 1853, and approved by the legal voters of said city, at an election held for that purpose, according to law, on the 23d day of June, 1853, is to issue and deliver to the said parties of the first part the negotiable corporate bonds of the said city of Milwaukee in an amount or amounts not to exceed in all two hundred
thousand dollars, payable in twenty years from the date there-
194 of, with interest, payable semi-annually, at the rate of seven per cent. per annum, both interest and principal payable at the office of Duncan, Sherman & Co., in the city of New York, as a loan by the said city to the said railroad company, to aid in the construction of its railroad, under and in conformity with the said act and ordinance above mentioned. And the said La Crosse and Milwaukee Railroad Company, for the security and indemnity of the said city for said issue and delivery of its bonds, as a loan to the said company as aforesaid, did, on the 16th day of February, 1854, execute to Alexander H. Johnson, treasurer of the said city, and his successors in office, for the use and benefit of said city, the bond of said company, under the authority of its board of directors, signed by the president, and countersigned by the secretary, of said company,

under the corporate seal of said company, in the penal sum of four hundred thousand dollars, with the condition and covenants therein, that said railroad company shall punctually pay and discharge the principal and interest moneys of such bonds of said city as may be issued and delivered to said company, as a loan aforesaid, as they shall severally become due, and shall also fully indemnify and save harmless the said city against all payments, liabilities, costs, damages and expenses which it may incur or sustain in consequence of the issue or delivery of such bonds, or any portion thereof, according to the conditions of the said bond of the said company. Now, therefore, this indenture witnesseth, that the said parties of the first part, in order to secure the performance of the covenants and conditions of the said bond of the said company, above stated, and in consideration of one dollar, to them in hand paid, at the sealing and delivery hereof, by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, transferred and conveyed, and by these presents do grant, bargain, sell, transfer and convey, to said party of the second part, and to his successors in office, for the use and benefit of said city of Milwaukee, all the following present, and future to be acquired, property of the said parties of the first part, that is to say: the first part of the railroad of the said parties of the first part, commencing at the point where it leaves the line heretofore adopted by the Milwaukee, Fond du Lac and Green Bay Railroad Company, in the county of Washington, thence westward to the town of Beaver Dam, in the county of Dodge, being a distance of forty miles, including the right of way, land occupied, or to be occupied, by said railroad together with
195 the superstructure and tracks thereon, and all rails and other materials used thereon, side-tracks, bridges, viaducts, culverts, fences, equipments, depot grounds and buildings thereon, engines, tenders, cars, tools, machinery, fixtures, and all other personal property within the limits aforesaid, rights thereto and interest therein, together with the name and functions appertaining to the said road, tolls, rents and income, to be had or levied therefrom, and all franchise, rights and privileges of the said party of the first part, of, in, to, or concerning the same, as well that hereafter to be acquired and constructed as that already acquired and constructed, under their said act of incorporation, wherever the same may be within the limits aforesaid; but nothing herein contained shall be construed to prevent the said parties of the first part from collecting and appropriating towards the construction, use, and repairs of the remaining part of said road westward and northward, all stock, subscriptions, donations and loans of money, and all bonds or other property not included in the foregoing description and not intended to be embraced in this indenture, which may have been or may hereafter be made for that purpose; but the said party of the first part shall have full right so to proceed without let or hindrance from the said party of the second part, and his successors in office, it being distinctly understood that the conveyance made by this indenture is only for so much of the present rights, interest or property, or in the future to

be acquired rights, interests, and property of the said parties of the first part as do or may exist on that part of said railroad extending from the said road in the county of Washington, where it leaves the line heretofore adopted by the Milwaukee, Fond du Lac and Green Bay Railroad Company, westward to the town of Beaver Dam, in the county of Dodge, a distance of forty miles. To have and to hold the said rights, property, premises, and every part thereof, with the appurtenances thereunto belonging, unto the said party of the second part, and his successors in office, for the use and benefit of the said city of Milwaukee forever; and the said parties of the first part hereby covenant to and with the said party of the second, that the said parties of the parties of the first part are well and truly seized of a good and perfect title to the premises above conveyed in the law, and have good right and lawful authority to convey the same, and that the title so conveyed is clear, free and unincumbered, and that the said parties of the first part will forever warrant and defend the same to the said party of the second part, and his successors in of-
196 fice, for the use and benefit of said city against all claims whatsoever, except, and this conveyance is made by the said company, and received by the said party of the second part, subject only to a first and prior mortgage of the same rights, property, premises and appurtenances above described, executed thereupon, for a sum not exceeding ten thousand dollars for each and every mile of road embraced therein. This conveyance is intended as a mortgage the secure the punctual payment and discharge of the principal and interest moneys of the bonds of the said city of Milwaukee, to be issued and delivered as a loan to the said parties of the first part, in an amount not to exceed in the aggregate two hundred thousand dollars, to aid in the construction of the La Crosse and Milwaukee railroad as aforesaid, and to secure the faithful performance of all the covenants and conditions of the said bond of the said parties of the first part, dated the sixteenth day of February, 1854, as aforesaid and above alluded to; and in case the said parties of the first part shall fail to pay the principal, or any part thereof, or any of the interest, or any of the said bonds of the said city of Milwaukee at any time when the same may become due and payable, according to the tenor thereof, or shall fail to perform any of the covenants and conditions of the said bond of the said company, then the said party of the second part and his successors in office may at once enter into and take possession of all or any part of the said premises and property, for the use and benefit of the said city of Milwaukee, and as the attorney in fact or agent of the said parties of the first part, by himself or agents, or substitutes duly constituted, have, use, and employ the same, making from time to time all needful repairs, alterations, and additions thereto, and after deducting the expenses of such use, repairs, alterations and additions, apply the proceeds thereof to the payment of so much of the principal and interest of all of said city bonds as remains unpaid, and of all liabilities of the said parties of the first part upon their said bonds, or the said party of the second part and his successors in office, at his or their discre-

tion, may lease the said premises or property, or so much thereof as shall be necessary to pay and discharge the principal and interest of the said city bonds, so much thereof as may then be due and unpaid, as aforesaid, and to indemnify and save harmless the said city from and against all liabilities, losses, and expenses incurred in consequence of the issue of its said bonds, to be sold at public auc-
197 tion in the city of Milwaukee, in the State of Wisconsin aforesaid, or in the city of New York, giving at least forty days notice of the time, place, and terms of such sale, and of the specified property to be sold, by publishing the same in two newspapers of good circulation in each of the said cities aforesaid, and wherever else required by law, and execute to the purchaser or purchasers thereof at such sale a good and sufficient deed of conveyance in the law for the same, which shall be a bar against the parties of the first part, their successors and assigns, and all persons claiming under them, except the holder or holders of the said first or prior mortgage, of all the right, interest, or claim in or to said premises and property, or any part thereof; and the said party of the second part shall, after deducting from the proceeds of said sale the costs and expenses thereof and of managing said property, apply so much of the proceeds as may be necessary to the payment of said principal and interest due or unpaid on said bonds, and to the indemnity of the said city, as aforesaid, and shall restore the residue thereof to the parties of the first part. It being hereby expressly understood that in no case shall any claim or advantage be taken of any valuation, appraisement, or extension laws by the said parties of the first part, nor any injunction nor stay of proceedings or any process be applied for or obtained by them to prevent such entry or sale, as aforesaid; and the said parties of the first part hereby covenant for the consideration aforesaid to execute and deliver any further reasonable and necessary conveyance of the said premises and property, or any part thereof, to the said party of the second part, and his successors in office, for the use and benefit of the said city, for more fully carrying into effect the object hereof. particularly for the consequence of any rights or property subsequently to the date hereof acquired by the said parties of the first part, and comprehended in the description hereinbefore contained; and the said parties of the first part hereby further covenant for the consideration aforesaid that the said city bonds so to be issued and delivered as a loan to the said parties of the first part, as aforesaid, and all of said bonds, or the avails thereof, shall be faithfully applied to the construction and completion of the said section of division of forty miles of said La Crosse and Milwaukee railroad, and embraced, or intended so to be, within this indenture ; and the said company do further covenant and agree that the said prior mortgage or lien upon said property and premises, in case of default in
198 the performance of the covenants and conditions therein contained, shall not authorize the sale of said mortgage, premises, and property for such default without public notice of such sale being given in the manner required by law, and for at least ninety days prior to such sale, and these presents are upon this express condition,

that on the payment by the said parties of the first part of the principal and interest of said city bonds, and on the full and complete performance by the said parties of the first part of all the covenants and conditions of their said bond above referred to, and of this indenture, the estate hereby granted to the said party of the second part shall be void, and the right to the premises hereby conveyed shall revert to and revert in the said parties of the first part, without any acknowledgment of satisfaction, reconveyance, warranty, or other act.

In witness whereof, the said La Crosse and Milwaukee Railroad Company have caused their corporate seal to be hereunto affixed, and these presents to be signed by their president and countersigned by their secretary the day and year first above written.

[SEAL.] STODDARD JUDD,
President of the La. C. and M. R. R. Co.

Signed and sealed in presence of—
J. H. DAWES.
R. WHITEHEAD.

STATE OF WISCONSIN, *Milwaukee county, ss:*

I, Robert Whitehead, notary public in and for said county of Milwaukee, do by this instrument given under my hand and official seal, certify that on this thirteenth day of July, 1854, before me personally appeared Stoddard Judd, who, being by me duly sworn, said that he is the president of the La Crosse and Milwaukee Railroad Company, that the seal affixed to the above instrument is the common and corporate seal of said company, and was affixed thereto by their authority, and that he as president subscribed his name thereto by the like authority; said Stoddard Judd being personally known to me to be the same person who executed said instrument.

R. WHITEHEAD, [SEAL.]
Notary Public, Milwaukee Co., Wisconsin.

199 *Exhibit No. —.—Mortgage to Bronson and Soutter, eastern division.*

Deed of trust made this seventeenth day of August, in the year of our Lord eighteen hundred and fifty-seven, between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, party of the first part, and Greene C. Bronson and James T. Soutter, of the city and State of New York, trustees as hereinafter mentioned, parties of the second part.

Whereas said railroad company, for the purpose of constructing its roads, has determined to borrow a sum of money not exceeding one million of dollars, and to issue not exceeding one thousand of its bonds for the repayment of the sums which may be borrowed, with interest thereon, which bonds will be numbered respectively from one to one thousand, both inclusive, and will be substantially in the following form, to wit:

"UNITED STATES OF AMERICA, *State of Wisconsin.*

"No. —. $1,000.

"Know all men by these presents, that the La Crosse and Milwaukee Railroad Company acknowledge themselves indebted to the
200 bearer hereof in the sum of one thousand dollars, for money borrowed for the construction of their roads, which sum they agree to pay to the bearer hereof, on the first day of September, in the year of our Lord 1870, at the Bank of the Republic in the city of New York, with interest at the rate of eight per cent. per annum, payable in the city of New York, semi-annually, on the first day of March and the first day of September in each year, on presentation and delivery of the interest warrants or coupons hereto annexed. The holder of this bond may, at any time within five years from the date hereof, convert the same into the capital stock of the company, estimating both the bond and the stock at par, on surrendering the bond with the unpaid coupons.

"This is one of one thousand bonds, all of the same tenor, and numbered from 1 to 1,000, respectively, making in all one million of dollars, for securing the payment of which a trust deed has been executed by said company to Greene C. Bronson and James T. Soutter, of the city and State of New York, conveying to them (subject to certain charges thereon) the railroad of said company, commencing in the city of Milwaukee, and running from thence to Portage City, a distance of ninety-five miles, which road has been constructed and is now in full operation; and also conveying to them the railroad of said company (as well as that part which has been constructed as that part which remains to be constructed) from Watertown, by the way of Columbus, to Milton, (where it connects with the main line of the railroad of said company,) a distance of forty miles, one-half of which last-mentioned road, being the part between Watertown and Columbus, has been constructed, and is now in full operation; together with the equipments and all other things pertaining or which may hereafter pertain to the roads so conveyed, or either of them, reference to which deed is hereby had and made for a more full description of its contents.

"In witness whereof, said railroad company has hereto affixed its corporate seal, and caused the same to be signed by its president and secretary, this first day of September, in the year of our Lord 1857.

[SEAL.] "——— ———, *President.*
"——— ———, *Secretary.*

"Registered and countersigned this day of 185 .
"——— ———, *Trustees.*"

201 And whereas said railroad company has determined to secure the payment of said bonds, with the interest thereon, in the manner herein provided:

Now, therefore, this deed witnesseth, that said railroad company, in consideration of the premises and the sum of one dollar paid by

said parties of the second part, has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm unto said parties of the second part, all and singular the railroad of said company, commencing in the city of Milwaukee and running from thence to Portage City, a distance of ninety-five miles, which road has been constructed and is now in full operation; and also the railroad of said company (as well that part which has been constructed as that part which remains to be constructed) from Watertown by way of Columbus to Midland, (where it connects with the main line of the railroad of said company,) a distance of forty miles, one-half of which last-mentioned road, being the part between Watertown and Columbus, has been construced and is now in full operation, including all and singular the several tracts, pieces, or parcels of land which now are, or may hereafter be or constitute the site of the roadways, turnouts, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which now constitute, or may hereafter constitute, or be part of or appertain to said railroads, or either of them; and also all and singular the superstructure of said railroads, whether now made or to be made hereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroads, or either of them, whether now built or made, or to be built and made hereafter; and also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description, which have already been or may hereafter be procured for or used on said railroads, or either of them; and all the materials, tools, implements, and utensils, and other personal property, which have been or may hereafter be procured for or used in connexion with said railroads, or either of them; and also all and singular the rights, liberties, privileges, and franchises of said railroad company, so far as they relate to said railroads from Milwaukee to Portage City, and from Watertown, by the way of Columbus, to Midland aforesaid; and it is hereby declared to be the intention of the parties to these presents to convey to and vest in said parties of the second part all the property, real and personal, of said railroad
202 company, to be acquired hereafter, as well as that which has already been acquired, together with all the rights, liberties, privileges, and franchises of said railroad company, in respect to said railroad from Milwaukee to Portage City, and from Watertown, by the way of Columbus, to Midland, as fully and amply as the same might be conveyed if said railroads had already been fully constructed and equipped.

Said railroad from Milwaukee to Portage City is subject to a first mortgage on the same of ten thousand dollars per mile, amounting in the aggregate to nine hundred and fifty thousand dollars; the first eighteen miles of said road from Milwaukee westward is subject to a second mortgage of one hundred and fourteen thousand dollars; and the next forty miles of said road westward of the eighteen miles, is subject to a second mortgage of two hundred thousand dollars.

To have and to hold all and singular the property, real and personal,

with the hereditaments and appurtenances and all and singular the rights, liberties, privileges, and franchises hereby conveyed or intended to be conveyed, subject to the aforesaid mortgages, to the said parties of the second part, and the survivor and successor of them, and their and his heirs and assigns forever, as joint tenants and not as tenants in common—in trust, nevertheless, and upon the trusts, terms, and conditions herein expressed.

First. Until default shall be made in the payment of said bonds, or some of them, or the interest thereon, said railroad company shall be suffered and permitted to hold and enjoy said railroads, with the equipments and all other things appertaining to the same, and to use the same, and to take and receive the income and profits thereof, to its own use, in the same manner as though this deed had not been made.

Second. In case default for the space of sixty days shall be made in the payment of any of said interest warrants or coupons, as they respectively fall due, or if default for the like period shall be made in the payment at maturity of the principal sum of money mentioned in any of the said bonds, then, and in either of said cases, it shall be lawful, and said trustees are hereby authorized in their discretion, either in person or by their attorney or attorneys, agent or agents, to enter into and upon, and take possession of, all and singular the railroads, and all the other property, real and personal, hereinbefore conveyed or intended to be conveyed, and to take and receive the income and profits thereof, and to sell all and singular said
203 railroads and other property, with all the rights, liberties, privileges, and franchises of said railroad company, in respect to said railroads from Milwaukee to Portage City, and from Watertown by the way of Columbus to Midland, either at public or private sale, and to execute and deliver to the purchaser or purchasers deeds and conveyances, which shall vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of said trustees and said railroad company of, in, or to said property, rights, liberties, privileges, and franchises, and every part and parcel thereof. But before any sale shall be made at auction, notice of such intended sale shall be published once in each week, for twelve weeks at the least, in two newspapers published in the city of New York, and in a newspaper published in the city of Milwaukee; and should any further notice be required by the laws of the State of Wisconsin, the same shall be given. And in case the interest in default shall at any time be equal to the amount of the interest for one year on all the bonds then outstanding, or in case default shall be made in the payment of the principal sum of money mentioned in said bonds, or any of them, at maturity, then, and in either of said cases, said trustees, on the written request of the holder or holders of the major part in amount of the bonds then outstanding, shall proceed to make such sales and conveyances as are above mentioned.

Third. Said railroad company covenants and agrees to and with said trustees, and the survivor and successor of them, that said com-

pany will, from time to time, during the continuance of the trust, make, execute, cause to be duly recorded, and deliver to said trustees all such further conveyances and assurances, and will do all such further acts and things as may either be necessary or proper for more effectually vesting in said trustees all such rights, title, interest, or estate, both legal and equitable, as said railroad company now has, or may hereafter acquire, of, in, or to all and every part of the property hereby conveyed or intended to be conveyed, together with the rights, liberties, privileges, and franchises aforesaid.

Fourth. Said railroad company will cause this deed to be duly recorded in all proper places, and will do whatever else may be necessary or proper to give full effect to the conveyance, and will pay and discharge all taxes, charges, liens, and other burdens which either exist or may hereafter arise, or be imposed upon the property hereby conveyed or intended to be conveyed; and the trustees as-
204 sume no duty or responsibility on those subjects, or any of them, nor in relation to any other matter or thing, except as is herein provided.

Fifth. This trust extends only to such bonds as shall be registered and countersigned by the trustees; and when all of said bonds shall be satisfied and discharged, the trust shall cease. The trust shall also cease at the end of six calendar months after the principal moneys shall fall due, as to all such bonds as shall not then have been presented for payment; and whenever the trust shall determine, and any moneys which may be due to the trustees shall be paid, the the trustees will reconvey to said railroad company all their right, title, and interest of, in, and to the trust property.

Sixth. Said railroad company will, from time to time, pay all costs, charges, expenses, and compensation of the trustees in, about, or for the execution of the trust, and will in all things keep them fully indemnified and saved harmless of, from, and against all damages, costs, charges, and expenses which they may sustain, or be put to, in consequence of accepting the trust, or of anything which may be done or omitted under it, saving only such damages as may arise from the culpable act or neglect of the trustees.

Seventh. The trustees are hereby authorized to appoint all such attorneys, counsellors, clerks, and other agents as they may deem proper in the execution of the trust, and shall not be answerable for the defaults or other misconduct of such attorneys, counsellors, or other agents, unless chargeable with culpable negligence in their selection; nor shall the trustees be responsible for anything short of gross negligence, or wilful default, in the discharge of any of their duties; nor shall either of the trustees be answerable for the acts, omissions, or defaults of his associate.

Eighth. All moneys which may be received by the trustees under the trust, after deducting therefrom all costs, counsel fees, charges, and other expenses of the trustees, and their compensation for executing the trust, shall be applied to the payment of the bonds which may be issued under the trust; and the surplus, if any, shall be paid to said railroad company.

Ninth. The supreme court in the first judicial district of the State of New York may remove either of the trustees, on the application of his associate or of the railroad company, reasonable notice being first given to said trustee. Either of the trustees may resign his trust, and be thenceforward discharged from all further duty or obliga-
205 tion in relation to it, provided such resignation, after reasonable notice to the president or secretary of said railroad company and the other trustee, shall be approved by said supreme court; and on the death, removal, or resignation of a trustee, said supreme court, on reasonable notice to the other trustee and said president or secretary, may appoint a new trustee, who shall thereupon acquire and have all right, title, interest, and authority under the trust, and be subject to all duties and responsibilities under the same as fully as though he had been the original trustee and had executed this deed.

Tenth. Said trustees hereby accept and covenant and agree to and with said railroad company, faithfully to execute said trust.

In witness whereof, said railroad company has hereto affixed its corporate seal, and caused the same to be subscribed by its president and secretary, and the trustees have subscribed their names and affixed their seals, the day and year first above written.

[Seal stamped on the paper.] BYRON KILBOURN, *President.*
JACKSON HADLEY,
Secretary of the Railroad Company.

[L. S.] GREENE C. BRONSON, } *Trustees.*
[L. S.] JAS. T. SOUTTER, }

Witness to the execution by Byron Kilbourn and Jackson Hadley—
WM. C. FORD.
H. L. RICHARDS.

Witness to the execution by Greene C. Bronson and James T. Soutter—
R. H. LOWRY.
H. W. FORD.

Copy of acknowledgment.

STATE OF NEW YORK,
City and county of New York, ss:

Be it remembered, that on this seventeenth day of August, one thousand eight hundred and fifty-seven, before me, the undersigned, Wm. Cleveland Ford, a commissioner, resident in the city of New , duly commissioned and qualified by the executive au-
206 thority and under the laws of the State of Wisconsin to take the acknowledgment of deeds, &c., to be used or recorded therein, personally appeared Byron Kilbourn, Jackson Hadley, Greene C. Bronson, and James T. Soutter, to me known to be the persons who executed the foregoing deed, and acknowledged the execution thereof, by them sealed and subscribed, to be their free act and deed for the uses and purposes therein mentioned.

In witness whereof, I have set my hand and affixed my official seal, the day and year aforesaid.

[SEAL.] WM. CLEVELAND FORD,
Commissioner for Wisconsin in New York.

Copy of certificate of recording indorsed on the back of the deed.

SECRETARY'S OFFICE,
Madison, August 21, 1857.

Received for record and recorded in book of railroad mortgages on pages 234, 235, 236, 237, 238, 239; received at 5 o'clock p. m.
D. W. JONES, *Secretary of State.*

Certified copy of resolutions of the directors of the company authorizing the trust, &c.

Resolved, That the company, for the purpose of carrying forward its legitimate operations, will issue its bonds to the amount of one million of dollars, each for the sum of one thousand dollars, to be numbered from number one to number one thousand, all of said bonds shall be expressed to be for money borrowed for the construction of their roads and shall be payable to the bearer thereof on the first day of September, in the year of our Lord 1870, at the Bank of the Republic, in the city of New York, with interest at the rate of eight per cent. per annum, payable in the city of New York, semi-annually, on the first day of March and the first day of September in each year, on presentation and delivery of the interest warrants or
207 coupons to be thereto annexed; said bonds shall be convertible into the capital stock of the company, estimating both the bonds and stock at par, at any time within five years from the date thereof, all of said bonds shall bear date on the first day of September, 1857, and be signed by the president and secretary, and have affixed to them the corporate seal of the company; and the said president and secretary are hereby authorized and directed, for and in behalf of the company, to sign the same, and the said secretary is hereby authorized and directed to affix the corporate seal of the company to the same.

Resolved, That for the better security of the payment of the aforesaid bonds, a deed of trust shall be executed bearing date at such time as the same can conveniently be executed by the respective parties thereto, between the La Crosse and Milwaukee Railroad Company, party of the first part, and Greene C. Bronson and James T. Soutter, of the city and State of New York, trustees, parties of the second part, which deed of trust shall be in the form following, to wit:

[Here follows a copy of the deed, excepting the date, signatures, seals, acknowledgment, &c.]

Which said deed of trust shall be executed in duplicate on the part of this company, party of the first part, by having thereto affixed its corporate seal and by being subscribed by the president and sec-

retary ; and the said president and secretary are hereby authorized and directed for and in behalf of the company to subscribe the same, and the said secretary is hereby authorized and directed to affix the corporate seal of the company to the same ; and when said deed of trust shall also be duly executed by the said trustees, parties of the second part, the company will cause the same to be duly recorded, without unnecessary delay, in such places and manner as the laws of this State may require, for the purpose of making the same a complete and perfect security in favor of the trustees and the persons who may become the holders of the bonds.

Resolved, That the president of this company be and *and* hereby is authorized to sell and dispose of all or any portion of an issue of one thousand bonds of this company, of one thousand dollars each, amounting to one million of dollars, to bear date September 1st, 1857, payable September 1, 1870, at the Bank of the Republic, in the city of New York, bearing interest at the rate of eight per cent. per annum, payable on the first days of March and September in each
208 year, which are issued under and secured by a deed of trust of this company to Greene C. Bronson and James T. Soutter, the execution of which bonds and deed of trust is authorized by resolutions of the board of directors adopted this 8th day of August, 1857, and the said president is authorized to sell the said bonds or any of them at the rate of eighty per cent. of their amount, payable half in cash and half in the stock of the company at par, or upon such other terms as he may deem proper.

Resolved, That a copy of these resolutions, duly certified under the seal of this company, be delivered to the trustees in said deed of trust.

I hereby certify the foregoing to be a true copy of a series of resolutions adopted by the board of directors of the La Crosse and Milwaukee Railroad Company, in session this eighth day of August, A. D. 1857.

In witness whereof, I have hereunto set my hand and *and* affixed the corporate seal of the La Crosse and Milwaukee R. R. Co.

[SEAL.] JACKSON HADLEY,

Secretary of the La Crosse and Milwaukee Railroad Company.

209 *Exhibit No. —. —Helfenstein mortgage.*

Deed of trust made this twenty-sixth day of September, in the year one thousand eight hundred and fifty-seven, (1857,) between The La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, party of the first part, and J. Albert Helfenstein, trustee, as hereinfter mentioned, of the city of Milwaukee, and State of Wisconsin, party of the second part.

Whereas the said La Crosse and Milwaukee Railroad Company, in pursuance of their corporate powers, are engaged in constructing a railroad from Madison, by the way of Portage City, to the city of Prescott, at the mouth of the St. Croix river or lake, and to the city of La Crosse, on the Mississippi river, and for the purpose of con-

structing the said road and purchasing supplies, materials and machinery therefor, and putting the same in operation, the company has determined to borrow a sum of money not exceeding one million of dollars, and to issue its bonds for the repayment of the money which may be borrowed, with interest thereon, five hundred of which bonds (exclusive of the numbering and interest warrants or coupons) will be substantially in the following form:

"UNITED STATES OF AMERICA, *State of Wisconsin.*

"The La Crosse and Milwaukee Railroad Company.

"Know all men by these presents, That the La Crosse and Milwaukee Railroad Company acknowledge themselves to be indebted to the bearer hereof in the sum of one thousand dollars lawful money of the United States, for money borrowed for the construction of their road from Madison to the city of Prescott, on the St. Croix river or lake, and from Portage City to the city of La Crosse, which sum they agree to pay to the bearer hereof on the first day of October, in the year of our Lord 1860, at the 'Bank of the Republic,' in the city of New York, with interest at the rate of eight per centum per annum, payable in the city of York, semi-annually, on the first day of April and the first day of October in each year, on presentation and delivery of the interest warrants or coupons
210 hereto annexed. This is one of the five hundred bonds all of the same tenor, and numbered from 1 to 500, respectively, which, with two thousand bonds for the sum of one hundred dollars each, numbered from 1 to 2,000, respectively; and six hundred bonds for the sum of five hundred dollars each, numbered from one (1) to six hundred (600), respectively, make in the aggregate the sum of one million of dollars, to secure the payment of all which bonds a deed of trust has been executed by said railroad company to J. Albert Helfenstein, conveying all such interest as said railroad company has acquired or may hereafter acquire, of all the lands in said deed of trust described; and also conveying all such interest as said railroad company has acquired or may hereafter acquire in said road from Madison to Prescott, and in the road from Portage City to La Crosse, with all the equipments and other things pertaining to said road; reference to which trust deed, bearing date the 26th day of September, 1857, is hereby had for a more free description of said lands, roads, and other property, and the interest thereby conveyed to said trustee.

"In witness whereof, said railroad company has caused these presents to be signed by its president and secretary, and its corporate seal to be hereto affixed, the first day of October, in the year of our Lord 1857.

"_____ _____, *President.*
"_____ _____, *Secretary.*

"Registered and countersigned by the trustee, this day of , 185 .

"_____ _____, *Trustee.*"

And two thousand of which bonds will be in the like form, but for the sum of one hundred dollars each, and six hundred of which bonds will be in the like form, but for the sum of five hundred dollars each.

And whereas said railroad company has determined to secure the payment of such bonds as may be issued as aforesaid in the manner herein provided:

Now, therefore, this deed witnesseth that the said railroad company, in consideration of the premises and of the sum of one dollar paid by said party of the second part, has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm unto said party of the second part all and singular the several tracts, pieces, or parcels of land which now are, or may hereafter be or constitute the site of the roadway, turnouts, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which now constitute, or may hereafter constitute or be a part of the roads of said railroad company from Madison, by the way of Portage City, to the city of Prescott, and from Portage City to the city of La Crosse, and also all and singular the superstructure of said roads, whether now made or to be made hereafter,
211 and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or pertaining to said roads, whether now built and made, or to be built and made hereafter; and also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description which have already been or may hereafter be procured for or used on said roads, or either of them; and all the materials, tools, implements, utensils, and other personal property which have been or may hereafter be procured in connexion with said roads, or either of them; and also all and singular the rights, liberties, privileges, and franchises of said railroad company, of every kind and description, relating to said roads; also all those certain pieces or parcels of land situate, lying, and being in the county of Pierce and State of Wisconsin, and described as follows, viz: The undivided half of the southeast quarter, and the east half of the southwest quarter of section No. two, (2,) township No. twenty-six (26) north, of range No. twenty (20) west, containing one hundred and ninety-two acres (192 acres.) Also the undivided half of one hundred and ninety-two (192) acres of land in section two (2) and three (3) in the town and range last aforesaid, and particularly described in a deed thereof from George W. McMurphy and wife to the said party of the first part, dated the twenty-ninth (29th) day of August, A. D. 1857; also the undivided half of the southwest quarter of section three (3) in township number twenty-six (26) north, of range twenty (20) west, containing one hundred and fifty-four acres, (154 acres,) being the same land conveyed to the said company by James R. Rice and wife, by deed bearing date on the twenty-eighth (28th) of August, A.D. 1857; also the undivided half of one hundred and four $\frac{60}{100}$ acres, (104 $\frac{60}{100}$ acres,) in section two (2) and three (3) of the town and range last aforesaid, and being the same lands conveyed to the said party of the

first part by Ephraim Hamsberger, by deed dated the twenty-seventh day of August, A. D. 1857; also ninety acres (90 acres) of land in section eleven (11) and twelve (12) in the town and range last aforesaid, being the same lands conveyed to the said party of the first part by Lewis M. Hamsberger, by deed dated the twenty-eighth (28th) day of August, A. D. 1857, and to which deed reference is made for a more particular description thereof; also the undivided half of seventy-five (75) acres of land in section twenty-four (24) in the town and range aforesaid, and being the same land conveyed to the said company by Pembroke and Wise and wife, by deed dated the twenty-eighth day of August, A. D. 1857, and to which deed reference is made for a more particular description thereof; also the undivided half of three hundred and twenty acres (320) in section No. one (1) in township No. twenty-six (26) north, of range twenty (20) west, conveyed to the party of the first part by O. F. Maxon; also the undivided half of one hundred and sixty (160) acres, in section No. two (2) in the same town and range, conveyed to the said party
212 of the first part by S. W. Wright; also the undivided half of three hundred acres (300) in section No. two (2) and three (3) in the same town and range, conveyed to the said party of the first part by William J. Capp; also the undivided half of twenty-four (24) acres in said section No. two (2) and three (3) in the same town and range, conveyed to the said party of the first part by John C. McMurphy; also the undivided half of one hundred acres (100) in section ten (10) in the same town and range, conveyed to the said party of the first part by Hilton Dol; also the undivided half of one hundred and sixteen acres (116) in section ten (10); and the undivided half of fifteen (15) acres in section fifteen (15) in the same town and range, conveyed to the said party of the first part by George Shazer; also the undivided half of twenty (20) acres in section ten (10) in the same town and range, conveyed to the said party of the first part by Elizabeth, Sarah Jane, and Susan Johnson; also the undivided half of ninety-three (93) acres in section, town, and range last aforesaid, conveyed to the said party of the first part by Isaac J. Foster; also the undivided half of ninety-five (95) acres, in the section, town, and range last aforesaid, conveyed to the said party of the first part by Chester Fox; also the undivided half of eighty (80) acres in section eleven (11) and twelve (12) in the same town and range, conveyed to the said party of the first part by S. O. McKeen; also the undivided half of seventy (70) acres in section No. fourteen (14) in the same town and range, conveyed to the said party of the first part by Allen H. Weld; also all the right, title, and interest of the said party of the first part, legal and equitable and present or prospective, of, in, and to all the lands hereinbefore described, and of, in, and to any other land in the county of Pierce aforesaid.

To have and to hold all and singular the property, real and personal, with the hereditaments and appurtenances, and all and singular the rights, liberties, privileges, and franchises hereby conveyed or intended to be conveyed to the said party of the second part, and his successors and successor, and his heirs and assigns forever—in trust,

nevertheless, and upon the trusts, terms, and conditions herein expressed.

First. Until default shall be made in the payment of said bonds, or some of them, or the interest thereon, said railroad company shall be suffered and permitted to possess, hold, and enjoy said roads hereinbefore described, with the equipments, and all other things appertaining to said road, and use the same, and take and receive the income and profits thereof, in the same manner as though this deed had not been made.

Second. In case default for the space of sixty days shall be made in the payment of any of said interest warrants or coupons, as they respectively fall due, it shall thereupon be lawful, and said trustee is hereby authorized and empowered, in his discretion, to sell at public or private sale, for the best prices which can be obtained for the same, all or any portion of the lands hereinbefore described, for the
213 purpose of obtaining the necessary funds to satisfy such default, and may appoint one or more agents or attorneys to make such sales, execute conveyances to the purchasers, and receive the purchase-money, and if the sum in default shall at any time be equal to the amount of the interest for one year on all the bonds then outstanding, and the same cannot be satisfied within a reasonable time by such sales of lands, or if default be made in the payment of the principal sum of said bonds at maturity, said trustee may thereupon, in his discretion, either in person or by his attorney or attorneys, agent or agents, appointed for that purpose, enter into and upon and take possession of all and singular the said road hereinbefore described, or any part of division thereof, and all the other property, real and personal, hereinbefore conveyed or intended to be conveyed, and may operate said road and take and receive the income and profit thereof, and may sell all and singular the said roads and all the other property, real and personal, hereinbefore conveyed or intended to be conveyed, either at public or private sale, and execute and deliver to the purchaser or purchasers deeds and conveyances which shall vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of said trustee and said railroad company of, in, and to said property, and every part and parcel, including the rights, liberties, privileges, and franchises of said railroad company in respect to the roads which may be sold as aforesaid, but before any sale of the said lands or roads, or either of them, or any part thereof, or the rights, liberties, privileges, or franchises aforesaid, shall be made at auction, notice of such intended sale shall be published once in each week, for twelve weeks at the least, in two newspapers published in the city of New York, and three newspapers at the least published in the State of Wisconsin, one of which shall be published in the city of Milwaukee, and should any further notice be required by the laws of the State of Wisconsin, the same shall be given.

Third. Said railroad company will cause this deed to be duly recorded in all proper places, and will satisfy and discharge all taxes, charges, liens, or other burdens which either exist or may hereafter

be imposed or arise on the whole or any part of the property hereby conveyed or intended to be conveyed, and said trustee assumes no duty or responsibility on those subjects or in relation to any other matter except as herein provided.

Fourth. Said trustee may appoint all such attorneys, counsellors, clerks, and other agents as he may deem proper in the execution of the trust, and shall not be answerable for the defaults or other misconduct of such attorneys, counsellors, clerks, or other agents, unless chargeable with culpable negligence in their selection; and further, the trustee shall not be answerable or responsible for anything short of gross negligence or wilful default in the discharge of his duties.

Fifth. This trust extends to such bonds and such only as shall be registered and countersigned by said trustee, and when all of said bonds shall be satisfied and discharged the trust shall cease.
214 The trust shall also cease at the end of six calendar months after the principal moneys shall fall due, as to all such bonds as shall not then have been presented for payment, and whenever the trust shall determine, and any moneys which shall be due to the trustee shall be paid, the trustee will reconvey to said railroad company all his right, title, and interest of, in, and to all of said trust property which may not have been previously disposed of in pursuance of the trust.

Sixth. The supreme court of the State of Wisconsin may remove the trustee on the application of the railroad company, reasonable notice being first given to such trustee. Any trustee may resign his trust and thenceforward be discharged from all further duty or obligation in relation to it, provided such resignation, after reasonable notice to the president or secretary of said railroad company, shall be approved by said supreme court. If at any time the trustee shall be removed or resign the trust, the said supreme court, on reasonable notice to said president or secretary, may appoint a new trustee, who shall thereupon acquire and have all rights, titles, interest, and authority under the trust, and subject to all duties, responsibilities in relation to the same as fully as though he had been originally named as a trustee and had executed this deed.

Seventh. Said railroad company will, from time to time, pay all such costs, charges, and expenses as the trustee may sustain or be put to in the execution of the trust, and keep him fully indemnified in the premises.

Said trustee hereby accepts, covenants, and agrees to and with said railroad company faithfully to execute said trust, and said railroad company hereby covenants and agrees to and with said trustee, his successors and successor, that said railroad company will, from time to time during the continuance of the trust, make, execute, and cause to be duly recorded and delivered to said trustee, or to the person or persons who shall then be trustee, all such further conveyances and assurances, and will do all such further acts as may be either necessary or proper for more effectually vesting in said trustee all such rights, title, interest, and estate, both legal and equitable, as said railroad company now has or may hereafter acquire of, in, and to all

and every part of the property hereby conveyed or intended to be conveyed.

(Signed) BYRON KILROURN, *President.*
JACKSON HADLEY,
Secretary of the Railroad Company.

In the presence of—
THOMAS W. BEAVER.
S. CHAMRERLAIN.

J. ALBERT HELFENSTEIN, *Trustee.* [SEAL.]

215 STATE OF WISCONSIN, *County of Milwaukee, ss:*

Be it remembered, that on this twenty-sixth day of September, in the year one thousand eight hundred and fifty-seven, before the subscriber, a notary public, residing in the city of Milwaukee, personally appeared Byron Kilbourn, to me known, who, being by me duly sworn, said that he resides in the city of Milwaukee, Wisconsin; that he is the president of the La Crosse and Milwaukee Railroad Company; that the seal affixed to the annexed instrument is the common corporate seal of said company, and was affixed thereto by their authority, and that he as president and Jackson Hadley as secretary subscribed their names thereto by like authority; and on the same day before me personally appeared J. Albert Helfenstein, described in and who executed the foregoing instrument, and acknowledged that he executed the same freely for the uses and purposes therein mentioned, and I certify that the person who made such acknowledgment is known to me to be the individual described in and who executed said instrument.

(Signed) H. L. PALMER,
Notary Public, Milwaukee, Wis.

216 *Exhibit No.* 1.—*Trust deed.*

This indenture, made the twenty-first day of June, in the year of our Lord eighteen hundred and fifty-eight, between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, party of the first part, and William Barnes, of the city of Albany, and State of New York, trustee as hereinafter mentioned, party of the second part.

Whereas the said railroad company, for the purpose of providing for and securing the payment of its floating debt, and for other purposes, has determined to issue its bonds for a sum not exceeding two millions of dollars in the aggregate, embracing one thousand bonds of one thousand dollars each, fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, with interest warrants in the usual form attached, and which bonds will be substantially in the following form, to wit:

UNITED STATES OF AMERICA, *State of Wisconsin.*

No. ——. $——.

Know all men by these presents, that the La Crosse and Milwaukee Railroad Company, for value received, acknowledge itself indebted to the bearer thereof in the sum of dollars, which sum it agrees to pay to the bearer hereof on the first day of July, in the year of our Lord one thousand eight hundred and eighty-eight, at the Albany Exchange Bank, in the city of Albany, with interest at the rate of seven per cent. per annum, payable at the Albany Exchange Bank, in the city of Albany, semi-annually, on the first day of January and the first day of July in each year, on presentation or delivery of the interest warrants or coupons hereto annexed. This is one of a series of bonds, all of the same tenor, making in the aggregate the sum of two millions of dollars, for securing the payment of which a trust deed has been executed by said company to William Barnes, of the city of Albany and State of New York, conveying to him (subject to certain charges thereon) the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred miles, part of which road has been constructed and is now in full operation, and the residue is in process of construction, together with the equipments and all other things pertaining, or which may hereafter pertain, to the road so conveyed, reference to which deed is hereby had and made for a more full description of its contents. And for further securing and providing for the payment of said bonds, the said deed of trust provides for the creation of a sinking fund, the first payment of $25,000 to which is to be made by said company to William Barnes, of Albany, the trustee named in said deed of trust, on the first day of July, eighteen hundred and sixty-one, and thereafter a like sum annually, with which sum, as from time to time paid, the said trustee is to purchase outstanding bonds secured by said deed of trust, as is more particularly specified in said deed of trust, to which reference is hereby made.

In witness whereof, said railroad company has hereunto affixed its corporate seal, and caused the same to be signed by the president and secretary, this 21st day of June, in the year of our Lord one thousand eight hundred and fifty-eight.

—— ——, *President.*

—— ——, *Secretary.*

Registered and countersigned this ——, 185 .

—— ——, *Trustee.*

And whereas said railroad company has determined to secure the payment of said bonds, with the interest thereon, in the manner herein provided:

Now, therefore, this indenture witnesseth, that said railroad company, in consideration of the premises and the sum of one dollar paid by said party of the second part, has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain,

sell, convey, and confirm unto said party of the second part all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred (200) miles, a part of which road has been constructed and is now in full operation, and the residue is in process of construction, including all and singular the several tracts, pieces, or parcels of land which now are, or hereafter may be or constitute the site of the roadways, turnouts, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which now constitute or may hereafter constitute or be a part of or appertain to said railroad. And also all and singular the superstructure of said railroad, whether now made or to be made hereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroad, whether now built or made, or to be built or made hereafter; and also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description which have already been or may hereafter be procured for or used on said railroad, and all the materials, tools, implements, and utensils, and other personal property which have been or may hereafter be procured for or used in connexion with said railroad; and also all and singular the rights, liberties, and privileges, and franchises of said railroad company, so far as they relate to said railroad from Milwaukee to La Crosse.

And it is hereby declared to be the intention of the parties to these presents to convey to and vest in said party of the second part all the property, real and personal, of said railroad company to be acquired hereafter, as well as that which has been already acquired,
together with all the rights, liberties, privileges, and franchises
217 of said railroad company, in respect to said railroad from Milwaukee to La Crosse, as fully and amply as the same might be conveyed if said railroad had already been fully constructed and equipped, excepting, however, any lands which now do or hereafter may belong to said company under any grant from the United States or the State of Wisconsin; subject, nevertheless, to lines already existing upon the property and franchises above mentioned, as follows: To a first mortgage upon the eastern division of the said road, between Milwaukee and Portage City, to secure outstanding bonds of said company, to the amount of about nine hundred and twenty-two thousand dollars. Also bonds to the city of Milwaukee to the amount of three hundred and fourteen thousand dollars. Also to bonds secured by second mortgages on said eastern division, subject to the amount of one million dollars. Also subject to a mortgage of four million dollars, upon the line of said road from Portage City to La Crosse, and to a second mortgage of about two hundred thousand dollars on the road from Portage City to La Crosse, and from the junction near the village of Tomah to the terminus of the road on the lakes or river St. Croix. To have and to hold all and singular the property, real and personal, with the hereditaments and appurtenances, and all and singular the rights, liberties, and franchises

hereby conveyed, or intended to be conveyed, subject to the aforesaid mortgages, to the aforesaid party of the second part and his successor, and his heirs and assigns forever—in trust, nevertheless, and upon the trusts, terms, and conditions herein expressed.

First. Until default shall be made in the payment of said bonds or some of them, or the interest thereon, said railroad company shall be suffered and permitted to hold and enjoy the said railroad, with all the equipments and all other things appertaining to the same, and to use the same, and to take and receive the profits thereof to its own use, in the same manner as though this deed had not been made.

Second. In case default for the space of 15 days shall be made on the payment of any of said interest warrants or coupons as they respectively fall due, or if default for the like period shall be made in the payment at maturity of the principal sum of money mentioned in any of the said bonds, then and in either of said cases it shall be lawful, and said trustee is hereby authorized in his discretion, either in person or by his attorney or attorneys, agent or agents, to enter into and upon and take possession of all and singular the railroad and all the other property, real and personal, hereinbefore conveyed or intended to be conveyed, and to take and receive the income and profits thereof, and to sell all and singular said railroad and other property, with all the rights, liberties, privileges, and franchises of said railroad company in respect to said railroad, either at public or private sale, and to execute and deliver to the purchaser or purchasers deeds and conveyances which shall vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of said trustee and said railroad company of, in, or to said property, rights, liberties, privileges, and franchises, and every part and parcel thereof. But before any sale shall be made at auction, notice of such intended sale shall be published once in each week for three weeks at the least, in two newspapers published in the city of New York, and in a newspaper published in the city of Milwaukee, and should any further notice be required by the laws of the State of Wisconsin, the same shall be given. And in case default shall at any time be made in the payment of the interest on the bonds then outstanding, or in case default shall be made in the payment of the principal sum of money mentioned in said bonds, or any of them, at maturity, then and in either of said cases, said trustee, on the written request of the holder or holders of bonds then outstanding, to the amount, in the aggregate, of one hundred thousand dollars, shall proceed to make such sales and conveyances so as above mentioned.

Third. Said railroad company covenants and agrees to and with said trustee, and his successor, that said company will, from time to time, during the continuance of the trust, make, execute, and cause to be duly recorded, and deliver to said trustee all such further conveyances and assurances, and will do all such further acts and things as may be either necessary or proper for more effectually vesting in said trustee all such right, title, interest or estate, both legal equitable, as said railroad company now has, or may hereafter

acquire, of, in, or to all and every part of the property hereby conveyed, or intended to be conveyed, together with the rights, liberties, privileges, and franchises aforesaid.

Fourth. Said railroad company will cause this indenture to be duly recorded in all proper places, and will do whatever else may be necessary or proper to give full effect to the conveyance, and will pay and discharge all taxes, charges, liens, and other burdens which either exist or may hereafter arise or be imposed upon the property hereby conveyed, or intended to be conveyed, and the trustee assumes no duty or responsibility on these subjects, or any of them, nor in relation to any other matter or thing, except as herein provided.

Fifth. This trust extends only to such bonds as shall be registered and countersigned by the trustee, and when all of said bonds shall be satisfied and discharged, the trust shall cease. The trust shall also cease at the end of six calendar months after the principal moneys shall fall due, as to all such bonds as shall not then have been presented for payment. And whenever the trust shall determine, and any moneys which may be due to the trustee shall be paid, the trustee will re convey to said railroad company all this right, title, and interest of, in, and to the trust property.

Sixth. Said railroad company will, from time to time, pay all costs, charges, expenses, and compensation of the trustee in, about, or for the execution of the trust, and will in all things keep him fully indemnified and saved harmless of, from, and against all damages, costs, charges, and expenses which he may sustain or be part to in consequence of accepting this trust, or of anything which may be done or omitted under it, saving only such damages as may arise from the culpable act or neglect of the trustee.

Seventh. And the said railroad company agree to establish and provide a sinking fund for the gradual redemption and payment of said bonds, and for that purpose will pay to the said trustee, on the first day of July, eighteen hundred and sixty-one, and annually thereafter until this trust is closed, the sum of twenty-five thousand dollars; with such sum, as from time to time the same shall be paid, the said trustee shall from time to time purchase outstanding bonds, secured by this deed of trust, at the lowest price he can pur-
218 chase the same for, first giving ten days' public notice in one or more newspapers published in New York, Albany, and Milwaukee, respectively, of his desire to purchase so many of said bonds as can be obtained for the money of said sinking fund then in his hands, and all bonds so purchased, belonging to said sinking fund, shall be retained by said trustee until this trust be closed.

Eighth. The trustee is hereby authorized to appoint all such attorneys, counsellors. clerks, and other agents as he may deem proper in the execution of the trust, and shall not be answerable for the defaults or other misconduct of such attorneys, counsellors, or other agents, unless chargeable with culpable negligence in their selection, nor shall the trustee be responsible for anything short of gross negligence or wilful default in the discharge of any of his duties.

Ninth. All moneys which may be received by the trustee under trust, after deducting therefrom all costs, counsel fees, charges and other expenses of the trustee, and his compensation for executing the trust, shall be applied to the payment of the bonds which may be issued under the trust, and the surplus, if any, shall be paid to said railroad company.

Tenth. The supreme court of the State of New York may remove the trustee on the application of the railroad company, reasonable notice being first given to said trustee. The trustee may resign his trust, and be thenceforward discharged from all further duty or obligation in relation thereto: *Provided*, Such resignation, after reasonable notice to the president or secretary of said railroad company, shall be approved by said supreme court. And on the death, removal, or resignation of a trustee, said supreme court may appoint a new trustee, who shall, thereupon, acquire and have all the right, title, interest, and authority under the trust, and be subject to all duties and responsibilities under the same, as fully as though he had been the original trustee and had executed this deed.

Eleventh. Said trustee hereby accepts and covenants and agrees to and with said railroad company faithfully to execute said trust.

In witness whereof, said railroad company has hereto affixed its corporate seal, and caused the same to be subscribed by its president and secretary, and the trustee has subscribed his name and affixed his seal the day and year first above written.

La Crosse and Milwaukee Railroad Company, by—

[SEAL.] N. P. STANTON, *President.*

LOCKWOOD L. DOTY,

Secretary of the La Crosse and Milwaukee Railroad Company.

WILLIAM BARNES, *Trustee.* [SEAL.]

Signed, sealed, executed, and delivered in our presence as to the La Crosse and Milwaukee Railroad company, by N. P. Stanton, president, and as to William Barnes, the said trustee—

CLARK, B.

J. C. CARY.

Signed, executed, and delivered in our presence, as to Lockwood L. Doty, secretary of said La Crosse and Milwaukee Railroad Company—

EDWARD P. WHALING.

P. M. JOHNSON.

STATE OF NEW YORK, *County of Albany:*

Be it remembered, that on this second day of July, in the year one thousand eight hundred and fifty-eight, before me the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin to take the acknowledgment and proof of the execution of deeds and other conveyances or leases, and of any contract, letter of attorney, or other writing under seal or not, administer oaths, and take and certify depositions to be used or recorded in the State of Wisconsin, appeared Nehemiah P. Stanton, described in and who

executed the above instrument in writing as the president of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the said instrument, as president as aforesaid, freely for the purposes therein stated, and I certify that the said person who made the said acknowledgment is personally known to me to be the individual described in and who executed the said instrument. And the said Nehemiah P. Stanton, being by me duly sworn, says that he is president of the La Crosse and Milwaukee Railroad Company, the abovenamed corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof, I have hereunto set my had and seal official, at my office No. seventy-one State street, in the city of Albany, the day and year first above written.

Given under my hand and official seal the day and year above written.

[SEAL.] EDWARD WADE,
Commissioner of the State of Wisconsin in and for the State of New York.

STATE OF NEW YORK, *County of Albany, ss:*

Be it remembered, that on the second day of July, in the year one thousand eight hundred and fifty-eight, before me the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin to take the acknowledgment and proof of the execution of deeds or other conveyances or leases, and of any contract, letter of attorney, or other writing under seal or not, administer oaths, and take and certify depositions to be used or recorded in the said State of Wisconsin, appeared William Barnes, described in and who executed the above instrument of writing between him, as one of the parties thereto, and the La Crosse and Milwaukee Railroad
219 Company, the other party thereto, and the said William Barnes acknowledged that he execu ed the said instrument freely for the purposes therein stated, and I certify that the person who made the said acknowledgment is personally known to me to be the individual described in and who executed the said instrument.

In testimony whereof, I have hereunto set my hand and seal official, at my office No. seventy-one State street, in the city of Albany, the day and year first above written.

Given under my hand and official seal, the day and year above written.

[SEAL.] EDWARD WADE,
Commissioner of the State of Wisconsin in and for the State of New York.

STATE OF WISCONSIN, *County of Milwaukee, ss:*

Be it remembered, that on this seventh day of July, eighteen hundred and fifty-eight, before me personally appeared Lockwood L. Doty,

to me well and personally known to be the person described in and who executed the above instrument in writing, as secretary of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the same freely and as the free act and deed of the said La Crosse and Milwaukee Railroad Company, for the uses and purposes therein mentioned, and the said Lockwood L. Doty, being by me duly sworn, says that he is the secretary of the La Crosse and Milwaukee Railroad Company, the abovenamed corporaton, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal.

[SEAL.] E. MARINER,

Notary Public, Milwaukee County, Wisconsin.

Recorded July 8th, 1858, at 8 o'clock a. m.

220 *Exhibit No.* 2.

Indenture, made the eleventh day of August, one thousand eight hundred and fifty-eight, between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, party of the first part, and William Barnes, of the city of Albany, and State of New York, trustee as hereafter mentioned, and under and by virtue of an indenture made by and between said corporation and said Barnes, on the twenty-first day of June, one thousand eight hundred and fifty-eight, party of the second part.

Whereas the Congress of the United States, by an act approved June 3d, 1856, entitled "An act granting public lands to the State of Wisconsin, to aid in the construction of railroads in said State," did enact as follows:

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That there be and is hereby granted to the State of Wisconsin, for the purpose of aiding in the construction of a railroad from Madison or Columbus, by the way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to Bayfield; and also from Fond du Lac, on Lake Winnebago, northerly to the State line, every alternate section of land, designated by odd numbers, for six sections in width on each side of said roads, respectively. But in case it shall appear that the United States have, when the line or routes of said roads are definitely fixed, sold any sections or parts thereof granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents, to be appointed by the governor of said State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tier of sections above specified, as much land in alternate sections or

parts of sections as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the right of pre-emption has attached as aforesaid, which land thus selected in lieu of those sold and which pre-emption has attached as aforesaid, together with the sections and parts of sections, designated by odd numbers as aforesaid and appropriated as aforesaid, shall be held by the State of Wisconsin for the use and purpose aforesaid : *Provided*, That the lands to be so located shall in no case be farther than fifteen miles from the line of the roads in each case, and selected for and on account of said roads : *Provided further*, That the lands hereby granted shall be exclusively applied in the construction of the road for which it was granted and selected, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever : *And provided further*, That any and all lands reserved to the United States by any act of Congress, for the purpose of aiding in any object of internal improvement, or in any manner for any purpose whatever, be and the same are hereby reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the route of said railroad through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the President of the United States.

SEC. 2. And be it further enacted, That the sections and parts of sections of land which by such grant shall remain to the United States, within six miles on each side of said roads, shall not be sold for less than double the minimum price of the public lands, when sold, nor shall any of the said lands become subject to private entry, until the same have been first offered at public sale at the increased price.

SEC. 3. And be it further enacted, That the said lands hereby granted to said State shall be subject to the disposal of the legislature thereof, for the purposes aforesaid, and no other, and the said railroads shall be and remain public highways, for the use of the government of the United States, free from toll or other charge upon the transportation of property or troops of the United States.

SEC. 4. And be it further enacted, That the lands hereby granted to said State shall be disposed of by said State only in the manner following, that is to say, that a quantity of land not exceeding one hundred and twenty sections, and included within a continuous length of twenty miles of road respectively, may be sold, and when the governor of said State shall certify to the Secretary of the Interior that any twenty continuous miles of either of said roads are completed, then another like quantity of land hereby granted may be sold, and so from time to time until said roads are completed ; and if said roads are not completed within ten years, no further sales shall be made, and the land unsold shall revert to the United States.

SEC. 5. And be it further enacted, That the United States mail shall be transported over said road, under the direction of the Post Office Department, at such price as Congress may by law direct : *Provided*, That until such price is fixed by law, the Postmaster

General shall have the power to determine the same. Approved June 3d, 1856.

And whereas the legislature of the State of Wisconsin subsequently passed an act, approved October 11th, 1856, which is in the following words :

"An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust created by an act of Congress entitled 'An act granting public lands to the State of Wisconsin, to aid in the construction of railroads in said State,' approved June 3d, 1856."

The people of the State of Wisconsin, represented in senate and assembly, do enact as follows :

SECTION 1. The La Crosse and Milwaukee Railroad Company is hereby authorized and empowered to survey, locate, construct, complete and perpetually to have, use, maintain, and operate railroads, with one or more tracks or lines, from the city of Madison, in the county of Dane, and from the village of Columbus, in the county of Columbia, on the most direct and feasible route, by the way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to Bayfield, and shall have, possess, exercise, and enjoy
221 the same rights, privileges, functions, franchises, authority, and immunities with reference to the said routes, or any railroad to be built thereon, as it now possesses and enjoys with reference to any route it is now authorized to occupy, or any railroad built, or to be built, thereon ; and there is hereby conferred upon the La Crosse and Milwaukee Railroad Company all the power and authority contained in the charter of said company, and in the acts amendatory thereof, for the purpose of carrying out the objects of this act, and of appropriating and applying the lands hereinafter in this act granted, or their proceeds, to aid in the construction of railroads by this act authorized to be built.

SEC. 2. The said roads shall be constructed on the most direct and feasible routes from Madison to Portage City, and from Columbus to Portage City, and simultaneously, as nearly as practicable, and both of them shall be completed by the last day of December, A. D. 1858. And for the purpose of estimating and selecting lands granted by Congress, the city of Madison is hereby designated as the point of commencement of said road, and the whole of the railroad hereby authorized to be constructed shall be constructed by said La Crosse and Milwaukee Railroad Company within ten years from the 3d day of June, 1856.

SEC. 3. The said La Crosse and Milwaukee Railroad Company shall never set up the defence of usury to any contract in any court whatsoever; it may purchase and own rails, chairs, spikes, engines, tenders, cars, and all other things necessary and useful for the construction or operation of a railroad, and sell the same, and shall also have power and authority to operate its said roads, or either of them, in connexion with any and all other railroads which may cross, come up to,

or connect with the said railroads, or either of them, upon such terms as shall be mutually agreed upon by and between the said companies: *Provided, however*, That the said La Crosse and Milwaukee Railroad Company, in making any such contract as last aforesaid, shall give no preference to one company over any other such company or companies as last above mentioned, but all such companies shall be put upon the same equal terms. *And provided also*, That if the said La Crosse and Milwaukee Railroad Company, and such other railroad company as may desire a running connexion with the same, shall at any time not be able to agree upon the terms of such connexions, then, and in that case, either party may apply to the circuit court of the circuit in which such connexion may be sought, and the said circuit court shall appoint three commissioners, whose duty it shall be forthwith to proceed to examine and adjust the terms on which the said connexion shall exist, and the said award of terms of connexion shall be filed in the office of the secretary of state, and shall be binding on both parties for the term of two years. Such application shall be on not less than ten days' notice in writing, to be given by the party making such application to the adverse party.

SEC. 4. For the purpose of aiding in the construction of the railroads which by this act the said La Crosse and Milwaukee Railroad Company is authorized to construct, all the interest and estate, present or prospective, of this State, in or to any and all the lands granted by the government of the United States to the State of Wisconsin, for the purpose of aiding in the construction of a railroad from Madison or Columbus by way of Portage City to the St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to Bayfield, by virtue of an act of Congress entitled "An act granting a portion of the public lands in the State of Wisconsin to aid in the construction of railroads," approved June 3d, 1856, together with all and singular the rights, privileges, and immunities conferred, or intended to be conferred, by the said act of Congress, are hereby granted to the said La Crosse and Milwaukee Railroad Company: *Provided*, That the said land shall be exclusively applied in the construction of that road for which it was granted and selected, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatever: *And provided further*, That the title to said lands shall vest in the said La Crosse and Milwaukee Railroad Company in the manner following, that is to say, whenever twenty continuous miles of said road shall have been completed so as to admit of running regular trains on the same the governor of this State shall certify to the Secretary of the Interior the fact that such twenty continuous miles of such roads are completed as aforesaid, then the title to two hundred and forty sections of said lands shall vest in the La Crosse and Milwaukee Railroad Company; and when a second continuous twenty miles of said road shall have been completed so as to admit of running regular trains of cars on the same the governor shall certify as before, and thereupon a further quantity of one hundred and twenty sections of said land shall vest in said company, and so

from time to time until said roads are completed; and it shall be the duty of the governor so to certify to the Secretary of the Interior whenever such twenty miles are completed so as to admit running regular trains of cars on the same; and the governor of the State shall, in his official capacity, and on behalf of the State, and under the great seal thereof, execute and deliver to the La Crosse and Milwaukee Railroad Company, whenever it shall, by virtue of the provisions of this charter, be entitled to any of said lands, a deed in fee simple of any and all the lands to which said company shall be entitled: *Provided*, That said company shall not sell any of said lands until twenty miles of said road shall be completed so as to admit of running regular trains over the same, and so on, from time to time, so that the sales of lands by said company shall never exceed six sections of land for every mile of road so completed.

SEC. 5. The location and designation of the route and line of the said roads shall be made by the said La Crosse and Milwaukee Railroad Company, and the same shall, from time to time, and as fast as practicable, be reported to the governor of the State. The selection of lands provided for in the act of Congress hereinbefore mentioned, shall be made by such agents as may be appointed by the governor of the State. Such selection, as well as the survey, location, and completion of said roads, and the compensation of such agents, shall be at the cost and charge of said company, without charge of any kind upon the treasury of the State of Wisconsin. Said railroads, which shall be constructed by the application of funds derived from the lands herein granted, shall be and remain public highways for the use of the government of the United States, free from any toll or other charge upon the transportation of property or troops
222 of the United States, and the United States mail shall be transported over said roads under the direction of the Post Office Department as provided in said act of Congress.

SEC. 6. In consideration of the grants, privileges, and franchises herein conferred upon the said La Crosse and Milwaukee Railroad Company for the purposes aforesaid, the said company shall, on or before the first day of March in each year, pay into the treasury of the State such sum as it is by the existing laws of the State required to pay in place of taxes upon its road now constructed, or which it may hereafter construct under the present charter, and in addition thereto it shall pay into the treasury of the State, on or before the first day of March in each year, four per centum on the gross earnings of said road to be built by said company in pursuance of the power and authority conferred by this act, for the year ending on the last day of the preceding December, in place of taxes on that portion of its said railroad so to be constructed; and for the purpose of ascertaining the gross earnings aforesaid, an accurate account of such earnings shall be kept by said company, an abstract whereof shall be furnished by said company to the treasurer of this State, on or before the first day of February in each year, the truth of which abstract shall be verified by the affidavits of the treasurer and secretary of said company; and for the purpose of ascertaining the truth of such

affidavits and the correctness of such abstracts, full power is vested in the governor of this State, or any other person appointed as may be by law prescribed, to examine the books and papers of said company, and to examine under oath the officers, agents, and employés of the said company and other persons, and if any person so examined by the governor, or other authorized person, shall knowingly or wilfully swear falsely concerning the matter aforesaid, every such person is hereby declared to have committed perjury; and for securing to the State the payment of the aforesaid per centum, it is hereby declared that the State shall have a lien upon the railroad of the said company, and upon all other property, estate, and effects of said company, whether real, personal, or mixed, and the lien hereby secured by the State shall take and have precedence of all demands, decrees, and judgments against the said company. The first payment shall be made on the first day of March next after fifty miles of said road shall be completed, and such payment shall be in lieu and in full of all claims of the State for the grant hereby made, and in consideration of such annual payment the said company shall be forever exempt from all assessments and taxes whatever by the State, or by any county, town, city, village, or other municipal authority in the State, (except special taxes for the improvement of streets and sidewalks,) upon all stock in the said La Crosse and Milwaukee Railroad Company, whether belonging to said company or to individuals, or any of its franchises or estate, real, personal, or mixed, held by said company, and necessary for the operation of said railroad, and said lands granted by said act of Congress, and hereby authorized to be conveyed to the La Crosse and Milwaukee Railroad Company, shall be exempt from taxation under and by virtue of the laws of this State for the period of ten years after the passage of this act, unless sooner sold, conveyed, or leased by the said La Crosse and Milwaukee Railroad Company, and the State shall have a prior lien upon the road of said company, and all the appurtenances and stock thereof, for all dues that may accrue to the State from said corporation as herein provided, which lien of the State shall take precedence of all demands, judgments, or decrees against said corporation.

SEC. 7. Within five years after the title of such lands shall become vested in the said railroad company, the same, if any shall remain unsold, shall be offered for sale in limited qualities at fair prices, preference being given to actual settlers.

SEC. 8. The said La Crosse and Milwaukee Railroad Company shall have full power and authority to transport persons and property in boats, vessels, barges, or other water craft, on any navigable water which any portion of their railroad may run to or connect with, and to receive and collect reasonable compensation for the same, and for that purpose may purchase or build and own such vessels, boats, barges, and other water craft as it may require.

SEC. 9. The said La Crosse and Milwaukee Railroad Company shall be capable in law of taking and holding any lands granted by the government of the United States, or of this State, to aid in the construction of railroads, which shall be conveyed to said company by

this act, or by deed, or by operation of law; and may also mortgage or pledge, or otherwise dispose of, all their right, title, claim, or demand of, in, or to any lands, or interest in lands, granted to said company by this act, and in any other estate, real, personal, or mixed, of which they may be seized at the time of execution of such mortgage, or which they may acquire subsequent thereto, in such manner and on such terms as the directors may think proper.

SEC. 10. In case the La Crosse and Milwaukee Railroad Company shall construct the railroad which by this act it is authorized to construct, or any part of it, upon or over any route upon or over which any other railroad company is authorized to construct a railroad, and upon or over which it has previous to the passage of this act actually surveyed or located its line of railroad, it shall be the duty of the La Crosse and Milwaukee Railroad Company to settle with such railroad company upon principles of justice and equity for all its property and rights of property which the said La Crosse and Milwaukee Railroad Company shall take, injure, or destroy, and the latter company shall pay to any such company whose property or rights of property shall be thus taken, injured, or destroyed, whatever the same is reasonably worth, such payment to be made in money, bonds, stock, or lands, or in such other manner as said companies shall mutually agree; and if the said companies cannot mutually agree upon the amount of compensation to be made by the said La Crosse and Milwaukee Railroad Company to such other company for the property and rights of property which said La Crosse and Milwaukee Railroad Company shall so as aforesaid take, injure, and destroy, then, and in that case, each of said companies shall select a disinterested engineer, and the two engineers so selected shall choose a third person, and in case they cannot agree upon such third person, the governor shall appoint such third person, and the three persons so selected shall constitute a board of commissioners whose duty it shall be to
223 ascertain, determine, and award the amount of compensation which the said La Crosse and Milwaukee Railroad Company ought, in justice and equity, to make to such other railroad company for the property and rights of property which shall be so as aforesaid taken, injured, or destroyed.

SEC. 11. This act, and all grants herein contained, shall cease and be void, unless the said La Crosse and Milwaukee Railroad Company shall accept of the same within five days after the passage of this act; and such acceptance shall be by a resolution adopted by the directors of said company, a copy of which, duly certified by the secretary of said company, under its corporate seal, within said period of five days from the passage of this act, shall be deposited in the office of the secretary of state. And in case the said La Crosse and Milwaukee Railroad Company shall violate the provisions of this act, the legislature may repeal this act, and may revoke all and singular the rights and franchises herein conferred, so far as the same has not been performed and fulfilled, and so far as the rights and privileges hereby granted have not become complete and absolute.

SEC. 12. All the property which the said La Crosse and Milwaukee

Railroad Company is authorized to appropriate, take, possess, hold, use, or enjoy, by making payment thereof, as is in this act provided, is hereby declared to be taken for public use, so soon as the said company shall so appropriate, take, possess, hold, or use the same.

SEC. 13. The capital stock of the La Crosse and Milwaukee Railroad Company is hereby increased two million dollars over and above its present capital, and within three months after the passage of this act said company shall open books for subscription to such increased capital stock, after giving at least thirty days' notice thereof in two newspapers, one published in the city of Milwaukee, and one published in the city of Madison. Such books shall be opened in the city of Milwaukee, and shall be kept open for not less than three days, and all persons shall be permitted to subscribe to said stock on the payment to the treasurer of the company of five per cent. of the amount subscribed in cash; but no one person shall be allowed to subscribe for more than two hundred and fifty shares of such stock; and in case the number of shares subscribed shall exceed the amount of two million of dollars, the same shall be reduced to that amount, by deducting such sums as may be necessary pro rata from each of the several subscriptions, and all of the shares of stock so subscribed shall be subject to calls for instalments thereon in like manner as the other stock of said railroad company.

SEC. 14. It is hereby declared that, in the judgment of the legislature of this State, the objects of the corporation named in this act cannot be attained under or by general laws.

SEC. 15. The La Crosse and Milwaukee Railroad Company shall fence its road in parcels, as it shall from time to time operate the same, within one year after it shall commence the operating of any and every such parcel, until the whole of such railroad shall be in a good, proper, and substantial manner fenced throughout the entire extent thereof.

SEC. 16. This act is hereby declared to be a public act, and the same shall immediately after the passage thereof be printed by the State printer, and when thus published shall take effect and be in force.

And whereas the said railroad company, after the passing of the last-mentioned act and on the same day, duly accepted the same by a resolution adopted by the directors of said company, a copy of which, certified by the secretary of said company under its corporate seal, was on the same day deposited in the office of the secretary of state:

And whereas the said railroad company, for the purpose of providing for and securing the payment of its floating debt and for other purposes, had determined before the date of the indenture hereinafter mentioned, dated June 21st, 1858, between said company of the first part, and said Barnes as trustee of the second part, to issue its bonds for a sum not exceeding two millions of dollars in the aggregate, embracing one thousand bonds of one thousand dollars each, fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, with interest warrants or coupons in the usual form attached:

And whereas also the La Crosse and Milwaukee Railroad Company executed and delivered to said party of the second part an indenture, dated on the 21st day of June, A. D. 1858, recorded in the office of the secretary of state of the State of Wisconsin, on the 8th day of July, A. D. 1858, in book of railroad mortgages, on pages 342, 343, 344, 345, 346, 347, 348, by which the said railroad company conveyed to said William Barnes, party of the second part, as trustee for the holders of said bonds as therein particularly specified, all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred (200) miles, including all and singular the several tracts, pieces, or parcels of land which constituted or might thereafter constitute the site of the road-ways, turnouts, engine-houses, workshops, depots, and other buildings, and all other lands which might thereafter constitute or be a part of or appertain to said railroad, and also other property, real and personal, and other rights, privileges, liberties, and franchises, as by reference thereto will more fully and at large appear:

And whereas also the said indenture contained a covenant and agreement on the part of the said La Crosse and Milwaukee Railroad Company to make, execute, and deliver to said William Barnes, as trustee as aforesaid, all necessary and proper further conveyances and assurances:

And whereas the said trustee has required the execution and delivery of this further conveyance:

Now, therefore, this indenture witnesseth: That the said La Crosse and Milwaukee Railroad Company, in consideration of the premises, and of the mutual promises herein contained, and the sum of one dollar, paid by the said party of the second part to said party of the first part, the receipt of which is hereby confessed and acknowledged, has granted, bargained, sold, conveyed and confirmed, and does by these presents grant, bargain, sell, convey and confirm unto said party of the second part, all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of
224 about two hundred (200) miles, and also the railroad of said company, commencing in the village of Madison, and running from thence by way of Portage City to the St. Croix river or lake, a distance of about two hundred and sixty-eight (268) miles, and also the railroad of said company, commencing in the village of Columbus, and running from thence to Portage City, a distance of about forty (40) miles, a part of which roads have been constructed and are now in full operation, and the residue are in process of construction; and all other railroads built or to be built and constructed by said company, or which they have a right to construct by or under any corporate or other rights, privileges, or franchises heretofore granted or given, or which may be hereafter granted or given to said La Crosse and Milwaukee R. R. Co. by the legislature of the State of Wisconsin, or from any other source, or in any other manner whatsoever, including all and singular the several tracts, pieces, or parcels of land which now are or hereafter may be or constitute the site of the road-ways, turnouts, engine-

houses, work-shops, depots, and other buildings, and all other lands and real estate which now constitute or may hereafter constitute or be a part of or appertain to said railroads, and including also all and singular the lots, lands, and real estate whatsoever, which the said railroad company now own, or which they shall hereafter acquire by purchase, grant, gift, or otherwise, in the cities of Milwaukee and La Crosse, or in the vicinity of either of said cities, and all improvements made or to be made thereon, and all rights of dockage and wharfage, and all other riparian rights, privileges, and franchises appertaining thereto, for a particular description of which lands already acquired, reference is made to the various deeds of the same to the said company. And also all and singular the superstructure of said railroads, whether now made or to be made hereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroads, whether now built or made or to be built or made hereafter. And also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description, which have already been or may hereafter be procured for or used on said railroads, and all the materials, tools, implements, and utensils, and other personal property which have been or may hereafter be procured for or used in connexion with said railroads. And also all and singular the rights, privileges, liberties, and franchises of said La Crosse and Milwaukee Railroad Company, of every kind and description. And also the said La Crosse and Milwaukee Railroad Company has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm unto said party of the second part all and singular the lands granted or intended to be granted to said railroad company under or by virtue of the act of Congress and the act of the legislature of the State of Wisconsin, hereinbefore mentioned, together with all and singular the hereditaments and appurtenances belonging or in anywise appertaining to the lands and real estate hereby conveyed or intended to be conveyed. And also all and singular the stock, railroad or other bonds, bills of exchange, promissory notes, accounts, causes of action, demands and choses in action of whatsoever nature, which may be owned, or in which the said railroad company may have an interest, on such day as the said railroad company may first make default in the payment of the interest or principal, or any part thereof, which may hereafter become due on any of the said bonds issued or to be issued by said company.

And it is hereby declared to be the intention of the parties to these presents to convey to and vest in said party of the second part all the property, real and personal and mixed, of said railroad company, to be acquired or vested hereafter, as well as that which has been already acquired or vested, together with all the rights, liberties, privileges, and franchises of said railroad company, as fully and amply as the same might be conveyed if said railroads had already been fully built, constructed, and equipped, and the particular lands granted by the foregoing acts of Congress and the said legislature had

already been fully designated, and duly conveyed and duly patented to said railroad company according to the provisions of said acts.

And the said La Crosse and Milwaukee Railroad Company, party of the first part, does hereby covenant, grant, bargain, promise, and agree to and with the said party of the second part, and his successors, grantees, and assigns, to warrant and forever defend the above-described and granted premises, lands, tenements, and every part and parcel thereof, and also all the property, real, personal, and mixed, now vested or acquired, or hereafter to be vested or acquired, and also all the rights, property, real, personal, and mixed, choses in action, privileges, and franchises above conveyed or intended to be conveyed, unto the said party of the second part, his successors, grantees, or assigns, against the said party of the first part, and against all and every other person or persons, States or corporations, lawfully claiming or to claim the same or any part thereof, subject, nevertheless, to all legal lines already existing upon the property and franchises above mentioned.

To have and to hold all and singular the said property, real, personal, and mixed, and choses in action, with the hereditaments and appurtenances, and all and singular the rights, liberties, privileges, and franchises hereby conveyed or intended to be conveyed, subject to the aforesaid existing legal liens, to the aforesaid party of the second part, and his successors and his heirs and assigns forever.

In trust, nevertheless, and upon the trusts, terms, and conditions herein expressed, and also expressed in the said indenture, made and executed by and between said parties on the 21st day of June, A. D. 1858.

First. Until default shall be made in the payment of said bonds, or some of them, or in the payment of the interest thereon, or some part thereof, and the said railroad company shall be suffered and permitted to hold and enjoy said railroads, with all the equipments and all other things appertaining to the same, and to use the same, and to take and receive the profits thereof to its own use, in the same manner as though this deed had not been made.

Second. In case of default for the space of fifteen days shall be made in the payment of any of said interest warrants or coupons as they respectively fall due, or if default for the like period
225 shall be made in the payment at maturity of the principal sum of money mentioned in any of the said bonds, then and in either of said cases it shall be lawful, and said trustee is hereby authorized in his discretion, either in person or by his attorney or attorneys, agent or agents, to enter into and upon, and take possession of, all and singular the railroads, and all the other property, real, personal, and mixed, and choses in action, hereinbefore conveyed, or intended to be conveyed, and to take and receive the income and profits thereof, and to take possession of all books, documents, maps, and papers, relating thereto, and to sell all and singular said railroads, and said other property, real, personal, and mixed, and choses in action, with all the rights, liberties, privileges, and franchises of said railroad company, either at public or private sale, and to execute and deliver

to the purchaser or purchasers deeds and conveyances which shall vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of said trustee and said railroad company, of, in, and to the said property, rights, liberties, privileges and franchises, and every part and parcel thereof. But before any sale shall be made at auction, notice of such intended sale shall be published once in each week for three weeks at the least, in two newspapers published in the city of New York, and in a newspaper published in the city of Milwaukee, and should any further notice be required by the laws of the State of Wisconsin, the same shall be given. And in case default shall at any time be made in the payment of the interest money of the bonds then outstanding, or in case default be made in the payment of the principal sum of money mentioned in said bonds, or any of them, at maturity, then and in either of said cases said trustee, on the written request of the holder or holders of bonds then outstanding to the amount in the aggregate of one hundred thousand dollars, shall proceed to make such sales and conveyances so as above mentioned.

Third. Said railroad company covenants and agrees to and with said trustee, and his successor, that said company will from time to time, during the continuance of the trust, make, execute, cause to be duly recorded, and deliver to said trustee all such further conveyances and assurances, and will do all such further acts and things as may either be necessary or proper for more effectually vesting in said trustee all such right, title, interest, or estate, both legal and equitable, as said railroad company now has or may hereafter acquire of, in, or to all and every part of the property hereby conveyed or intended to be conveyed, together with the rights, liberties, privileges and franchises aforesaid.

Fourth. Said railroad company will cause this indenture to be duly recorded in all proper places, and will do whatever else may be necessary or proper to give full effect to this conveyance, and will pay and discharge all taxes, charges, liens, and other burdens which either exist or may hereafter arise or be imposed upon the property hereby conveyed or intended to be conveyed, and the trustee assumes no duty or responsibility on these subjects or any of them, nor in relation to any other matter or thing, except as herein provided.

Fifth. The trustee is hereby authorized to appoint all such attorneys, counsellors, clerks, and other agents, in addition to those provided for in said original indenture, executed by and between said parties on the 21st day of June, 1858, and recorded as above mentioned, as he may deem proper in the execution of the trust, and shall not be answerable for the defaults or other misconduct of said attorneys, counsellors, clerks, or other agents, unless chargeable with culpable negligence in their appointment, nor shall the trustee be responsible for anything short of gross negligence or wilful default in the discharge or omission to discharge of any of his duties.

And it is hereby expressly declared, covenanted, and agreed by the said railroad company, that the provision herein contained for the security of said bonds are in addition to the provisions, liens, and se-

curities made or created in that behalf in the said original deed of trust or mortgage, executed by and between said parties, bearing date June 21st, 1858, and recorded as aforesaid, and that all such original provisions, liens, and securities are to remain in full force and effect; and also that all provisions in said original deed of trust or mortgage for the benefit or protection of said trustee are to remain in full force and effect, and are to be applicable to all trusts and actions or omissions to act under this indenture, in the same manner as if all the provision thereof had been inserted and incorporated in said original trust deed or mortgage.

Said trustee hereby accepts and covenants and agrees to and with said railroad company faithfully to execute said trust.

In witness whereof, said railroad company has hereto affixed its corporate seal, and caused the same to be subscribed by its president and secretary, and the trustee has subscribed his name and affixed his seal the day and year first above written.

[SEAL.] La Crosse and Milwaukee Railroad Company, by—
N. P. STANTON, *President.*
LOCKWOOD L. DOTY, *Secretary.*
WILLIAM BARNES, *Trustee.* [SEAL.]

Signed, sealed, executed, and delivered in our presence, as to the La Crosse and Milwaukee Railroad Company, by N. P. Stanton, president—

BYRON KILBOURN.
T. W. BEAVER.

Signed, executed, and delivered in our presence, as to Lockwood L. Doty, secretary of said La Crosse & Milwaukee Railroad Company—

EDWARD P. WHALING.
T. W. BEAVER.

Signed, sealed, executed, and delivered in our presence, as to William Barnes, the said trustee—

JOHN G. WHITE.
ISAAC EDWARDS.

226 STATE OF WISCONSIN, *County of Milwaukee, ss:*

Be it remembered, that on this twenty-fourth day of August, eighteen hundred and fifty-eight, before me, personally appeared Nehemiah P. Stanton, described in, and who executed, the above instrument in writing as the president of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the said instrument as president as aforesaid, freely for the purposes therein stated, and I certify that the said person, who made the said acknowledgment, is personally known to me to be the individual described in, and who executed, the said instrument. And the said Nehemiah P. Stanton, being by me duly sworn, says that he is the president of the La Crosse and Milwaukee Railroad Company, the abovenamed corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by

the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof, I have hereunto set my hand and seal official, at my office, No. Third street, in the city of Milwaukee, the day and year above written.

Given under my hand and official seal the day and year above written.

[SEAL.] EDWARD P. WHALING,
Notary Public, Milwaukee county, Wisconsin.

STATE OF WISCONSIN, *County of Milwaukee, ss:*

Be it remembered, that on this 24th day of August, eighteen hundred and fifty-eight, before me personally appeared Lockwood L. Doty, to me well and personally known to be the person described in, and who executed, the above instrument in writing as secretary of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the same freely and as the free act and deed of the said La Crosse and Milwaukee Railroad Company, for the uses and purposes therein mentioned; and the said Lockwood L. Doty, being by me duly sworn, says that he is the secretary of the La Crosse and Milwaukee Railroad Company, the abovenamed corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof, I have hereunto set my hand and seal official, at my office, No. Third street, in the city of Milwaukee, the day and year above written.

Given under my hand and official seal the day and year above written.

[SEAL.] EDWARD P. WHALING,
Notary Public, Milwaukee County, Wisconsin.

STATE OF NEW YORK, *County of Albany, ss:*

Be it remembered, that on the sixteenth day of August, in the year one thousand eight hundred and fifty-eight, before me, the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin to take the acknowledgment and proof of the execution of deeds or other conveyances or leases, and of any contract, letter of attorney, or other writing, under seal or not, administer oaths, and take and certify depositions to be used or recorded in the said State of Wisconsin, appeared William Barnes, described in, and who executed, the above instrument of writing between him, as one of the parties thereto, and the La Crosse and Milwaukee Railroad Company, the other party thereto, and the said William Barnes acknowledged that he executed the said instrument freely for the purposes therein stated; and I certify the said person who made the said acknowledgment is personally known to me to be the individual described in, and who executed, the said instrument.

In testimony whereof, I have hereunto set my hand and seal official, at my office, No. seventy-one State street, in the city of Albany, the day and year first above written.

Given under my hand and official seal the day and year above written.
[SEAL.] EDWARD WADE,
Commissioner of the State of Wisconsin in and for the State of New York.
Recorded Sept. 1st, 1858, at 8 o'clock a. m.

227 Circuit court of the United States for the 9th circuit and district of Wisconsin, in equity.

FREDERICK P. JAMES and OTHERS
vs.
THE MILWAUKEE MINNESOTA RAILROAD Company and others.

The respective parties hereto hereby stipulate that the foregoing copies of the respective mortgages made, executed, and delivered by the La Crosse and Milwaukee Railroad Company printed and attached hereto, may be read in evidence on the hearing of this cause without objection that they are copies and not their respective originals, and that they were all respectively duly registered soon after their execution and in the order of their execution, the complainants waiving no objection as to the materiality or competency of either of said mortgages as evidence in this cause.

This stipulation being executed to save the expense of procuring certified copies of the respective records thereof, should any mistake of printing be discovered therein, they shall be corrected at any time by either party.

This stipulation is to be filed this day and be for the use of either of the parties.

Dated Decem. 22, 1864.

FINCHES, LYNDE & MILLER,
Sol'rs for Complainants.
MATT. H. CARPENTER,
Sol. for Mil. and Minn. R. R. Co.

228 Circuit court of the United States for 9th circuit and district of Wisconsin, in equity.

FREDERICK P. JAMES *et als.*
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company, and others.

It is hereby stipulated by the respective parties subscribing this stipulation as follows, viz:

That Exhibit No. 1, hereto attached, is copy of the lease made by the La Crosse and Milwaukee Railroad Company to Selah Chamberlain mentioned in the bill of complaint in this cause, and copy of a contract entered into by and between said company and said Chamberlain, entered into by them the same day with said lease and at the same time; and that said copies may be read in evidence in this cause on the hearing thereof with the same effect as if their respective originals were produced. It is further stipulated that the said La

Crosse and Milwaukee Railroad Company, on the 2d day of October, 1857, confessed a judgment in favor of the said Selah Chamberlain, for 629,089 $\frac{12}{100}$ dollars damages, and fifteen dollars and fifty cents costs, without suit brought, which judgment was docketed that day.

The complainant waives no right to object to the evidence on the ground of materiality, this stipulation being made to save the expense of producing record evidence.

Dated December 20, 1864.

MATT. H. CARPENTER,
Sol. for the Mil. and Minn. R. R. Co.
FINCHES, LYNDE & MILLER,
Sol'rs for Compl'ts.

229 *Exhibit No. 1.—Lease.—The La Crosse and Milwaukee Railroad Company to Selah Chamberlain.*

Articles of agreement made and entered into by and between the La Crosse and Milwaukee Railroad Company, a corporation duly created and existing under and by virtue of the laws of the State of Wisconsin, party of the first part, and Selah Chamberlain, of the city of Cleveland and State of Ohio, party of the second part, at the city of Milwaukee and State of Wisconsin, the twenty-sixth day of September, in the year of our Lord one thousand eight hundred and fifty-seven.

The said party of the first part in consieration of the undertakings and agreements of the said party of the second part hereinafter contained, hereby sells and conveys to the said party of the second part all its personal property of every name, kind, and description in the State of Wisconsin, except all such personal property as is used in and is appurtenant to the operation of the Watertown division of the La Crosse and Milwaukee railroad, of which said property an inventory and schedule shall be made and attached hereto so soon as the same can be conveniently done.

And the said party of the first part, in consideration of the said undertakings and agreements of the said party of the second part, hereby leases and lets to the said party of the second part, from and after the thirtieth day of September, in the year 1857, for an indefinite term of time, to be determined in the manner hereinafter specified, its entire railroad and railroad route from the city of Milwaukee, by way of Horicon and Portage City, to the city of La Crosse, together with its right of way, depot grounds, and all buildings, tenements, and fixtures of whatsoever kind or description connected therewith or appurtenant thereto, together with all estate, rights, privileges, and appurtenances and franchises connected therewith or belonging or incident thereto, subject only to such prior superior liens as may or do exist thereon. and all existing contracts or agreements with any other company whose railroad connects with the La Crosse and Milwaukee railroad.

It is mutually agreed that the said party of the second part shall from and after the said thirtieth day of September, and until this agree-

ment shall be terminated in the manner hereinafter provided, operate so much of the said railroad as is ready for operation, and from time to time such portions of the same as shall be made ready for operation, in such manner as will produce the largest amount of net receipts. That the said party of the second part shall, during the term aforesaid, keep the said road and all the rolling stock upon the same in good and thorough repair, and that the said party of the second part shall receive and appropriate in the manner hereinafter provided, all the receipts or income to be derived from the operation of said railroad.

It is further mutually agreed that the said party of the second part may, if it shall be found for the interest of said company, buy additional rolling stock, and appropriate the receipts of said railroad to the payment of the same.

The said party of the second part hereby undertakes and agrees that he will defray all the current cost and expenses of keeping said railroad and rolling stock in good and thorough repair, and all the cost and expenses of operating the said railroad, and that he will, by the fifteenth day of every month, make out and deliver to said party of the first part a correct statement, exhibiting the total receipts and income of said railroad from all sources during the next preceding month; also the cost and expenses, during such month, of rolling stock purchased, and of keeping said railroad and rolling stock in repair, and the cost and expenses of operating said railroad, and also exhibiting the net receipts from said railroad, after deducting such cost and expenses of rolling stock and repairs, and of operating, and that he will at any time, on demand of said company or its president or secretary, furnish to the person demanding the same a statement in detail of the items of which such statement is composed, and any officer or agent of said company authorized by said company to do so shall at any time have the right to examine the accounts of said party of the second part relating to the repairs of said railroad and rolling stock, and to the operating of said railroad.

And the said party of the second part further undertakes and agrees that the said net receipts, after deducting the cost and expenses of repairs and operating, as exhibited by the said monthly statements as aforesaid, shall be appropriated by him in the manner following, to wit:

1. To the payment of all coupons hereinafter to become due upon nine hundred and fifty thousand dollars of the bonds of said company, secured by a first mortgage or deed of trust of said railroad from Milwaukee to Portage City, bearing date June 13th, A. D. 1854, together with the sinking fund provided for by a supplemental mortgage or deed of trust, bearing date February 18, 1856, except such of said coupons as are payable November 1st, 1857, and the sinking fund of twelve thousand dollars, payable November 1, 1857.

2. To the payment of all coupons hereafter to become due on one hundred and fourteen thousand dollars of bonds of the city of Milwaukee, issued to the Milwaukee, Fond du Lac, and Green Bay Railroad Company, secured by a second mortgage or deed of trust on a

part of said railroad, which mortgage or deed of trust bears date on the first day of September, A. D. 1853.

3. To the payment of all coupons hereafter to become due on two hundred thousand dollars of the bonds of the city of Milwaukee, issued to the La Crosse and Milwaukee Railroad Company, secured by a second mortgage or deed of trust on a part of said railroad, which mortgage or deed of trust bears date the thirtieth day of July, A. D. 1854.

230 4. To the payment of all coupons hereafter to become due on one million of dollars of the bonds of the said railroad company, secured by mortgage or deed of trust on the railroad of said company from Milwaukee to Portage City, and from Watertown to Midland, bearing date the day of , A. D. 1857.

5. Whatever balance of said net receipts, as aforesaid, shall remain after the payment of the said coupons and sinking fund, shall be applied by said party of the second part in payment of the amount due, or hereafter to become due, to him by virtue, either of a certain contract between said parties, dated January twentieth, 1857, a supplemental contract between said parties dated April 30th, 1857, or a certain contract between said parties, dated November 20th, 1856, or of a contract modifying said contract entered into between the said parties simultaneously with this contract, except such as may become due for work which shall be hereafter done, between New Lisbon and La Crosse, which is to be paid for from the means of the said company other than the same income.

And the said party of the second part further undertakes and agrees that whenever he shall have received from the earnings of the said railroad such sum as by the terms and conditions of the aforesaid contract for the construction of the said railroad, bearing date respectively November 20th, 1856, January 20th, 1857, April 30th, 1857, and the one entered into simultaneously herewith, he is or shall be entitled to receive, or whenever at any time the said party of the first part shall pay to him any balance which at such time he shall be entitled to receive, according to the terms and conditions of the said contract, that he will surrender up to the said party of the first part the quiet and peaceable possession of the whole and every part of the said railroad, together with its right of way, depot grounds, and all buildings, tenements, and fixtures of whatsoever kind or description, connected therewith or appertaining thereto, in good repair, together with all estate, rights, privileges, franchises, and appurtenances connected therewith, or belonging or incidental thereto, including all the railroad buildings, tenements, fixtures, and appurtenances constructed, and all rolling stock and other personal property put upon said road by said party of the second part, by virtue of this contract, and that he will reconvey and deliver to said party of the first part all personal property hereby conveyed, which shall not have been worn out, destroyed, or consumed in the construction or operation of the said railroad, and that he will convey and deliver to said party of the first part all personal property which shall have been acquired for said railroad in pursuance of this contract, or with

the means derived from the receipts from said railroad, and that he will, at such time, deliver on the line of said railroad, to said party of the first part, fifteen thousand cords of wood, and that whenever the said party of the second part shall have received as aforesaid such sum as he shall be entitled to as aforesaid, or whenever such balance shall be paid as aforesaid, this contract shall cease and determine, and from thenceforth it shall be null and void.

In witness whereof, the said party of the first part hath caused these presents to be signed by its president and secretary, and its corporate seal to be hereunto affixed, and the same are signed by the said party of the second part.

(Signed)

La Crosse and Milwaukee Railroad Company, by—

BYRON KILBOURN, *President.* [L. S.]

JACKSON HADLEY, *Secretary.*

S. CHAMBERLAIN. [L. S.]

Signed, sealed, and delivered in the presence of—

H. L. PALMER,

THOMER W. BEAVER.

STATE OF WISCONSIN, *Milwaukee county, ss:*

Be it remembered, that on this twenty-sixth day of September, in the year one thousand eight hundred and fifty-seven, before the subscriber, a notary public, residing in the city of Milwaukee, personally appeared Byron Kilbourn, to me known, who being by me duly sworn, said that he resides in the city of Milwaukee, Wisconsin; that he is the president of the La Crosse and Milwaukee Railroad Company; that the seal affixed to the annexed instrument is the common and corporate seal of said company, and was affixed thereto by their authority; and that he as president, and Jackson Hadley as secretary, subscribed their names thereto by like authority; and on the same day before me personally appeared Selah Chamberlain, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same freely for the uses and purposes therein mentioned.

(Signed) H. L. PALMER,

Notary Public, Milwaukee County.

231 *Contract.—La Crosse and Milwaukee Railroad Company with Selah Chamberlain.—Copy from directors' minutes.*

Resolved, That a contract be entered into with Selah Chamberlain, which shall be signed by the president and secretary, and sealed with the corporate seal of the company, in the words and figures following, to wit:

This indenture, made and entered into this twenty-sixth day of September, in the year of our Lord one thousand eight hundred and fifty-seven, by and between the La Crosse and Milwaukee Railroad

Company, a corporation duly created and existing under and by virtue of the laws of the State of Wisconsin, party of the first part, and Selah Chamberlain, of the city of Cleveland and State of Ohio, party of the second part—

Witnesseth: That the said parties have mutually undertaken and agreed, and by these presents do undertake and agree to and with each other, that the contract heretofore entered into between the said parties for the construction of the western division of the La Crosse and Milwaukee railroad, from Portage City to La Crosse, excepting the bridge across the Wisconsin river at Kilbourn City, and which contract bears date the 20th day of January, A. D. 1857, and the supplemental contract entered into between the same parties, and bearing date the 30th day of April, A. D. 1857, shall be and the same are hereby modified as follows, viz :

The said party of the second part shall proceed to complete the construction of said railroad as far as the depot at New Lisbon, in the county of Juneau, with reasonable despatch, and by the first day of December next. The time for completing said railroad from New Lisbon to La Crosse is extended indefinitely, and the said party of the second part shall construct the said railroad, between the two last-named points, as fast as and no faster than the said party of the first part shall be prepared and ready to pay the said party of the second part for the same in cash, or monthly estimates, according to the terms and stipulations of the aforesaid contract.

The contract entered into by and between said parties on the twentieth day of December, A. D. 1856, for the ballasting that portion of the La Crosse and Milwaukee railroad extending from Beaver Dam to Portage City, is hereby so modified that the said party of the first part shall not provide or furnish the motive power and cars requisite for doing said work, but that the motive power so used shall be a part of that specified in a contract between said parties entered into simultaneously with this contract for the leasing of said road, and that said party of the second part shall, for all ballasting which he shall do on said railroad between Milwaukee and Beaver Dam, under the direction and by the order of the chief engineer of said company, be paid at the rate of fifty cents per cubic yard, to be measured in the gravel pit from whence the material shall be taken.

In consideration of the aforesaid extension of the time of constructing the said railroad from New Lisbon to Portage City, and of the damages which the said party of the second will sustain by reason of such extension and by loss, as teams, materials, tools, machinery, and in other ways, and also in consideration of the mode in which the said party of the second part is to be paid the amount now due to him, and the amount to become due to him for finishing said railroad to New Lisbon, and in consideration of the failures and delays of the said party of the first part in making payments to the said party of the second part upon estimates heretofore due, and in further consideration of the services, risks, and personal expenses of the said party of the second part in the operation and management of said railroad as hereinafter referred to and more particularly set forth in said contract of

lease, the said party of the first part hereby agrees to pay to the said party of the second part the liquidated sum of two hundred thousand dollars, which sum is mutually agreed upon by said parties as an equivalent for the aforesaid consideration.

It is further stipulated and agreed that by or before the 20th day of October, A. D. 1857, a full and correct statement shall be made out of the amounts due to the said party of the second part on the 30th day September, 1857, under and by virtue of the said contracts of January 20th, 1857, April 30th, 1857, and November 20th, 1856. which sum, together with the aforesaid sum of two hundred thousand dollars (200,000,) shall be the balance due to the said party of the second part on the 1st day of October, 1857, and shall be charged by said party of the second part to the said party of the first part, and on the first day of every month thereafter the said party of the second part shall charge the said party of the first part with the amount which shall be due under or by virtue of either of said contracts or this contract in constructing the said railroad between Portage City and New Lisbon, or in ballasting between Milwaukee and Portage City, and shall credit said party of the first part with such sum as the said party of the first part shall be entitled to receive from the net earnings of said railroad, by virtue of the said contract of lease entered into between said parties simultaneously with these presents.

It is further agreed between the said parties that on the 1st day of July, 1858, and on the 1st day of each July and each January thereafter, a semi-annual statement of the accounts between said parties shall be made out, in which interest shall be computed up to the day of making out such accounts, at the rate of twelve per cent. per annum.

It is further agreed between the said parties that whatever sums shall hereafter become due to said party of the second part for any work done on the construction of said railroad between New Lisbon and La Crosse, shall be paid to him by said party of the first part from the means of said company derived from other sources than the income of said railroad.

In witness whereof, the said party of the first part has caused these presents to be signed by its president and secretary, and the corporate seal of said company to be affixed thereto, and the said party of the second part has affixed his signature and seal the day and year first above written.

[L. S.] La Crosse and Milwaukee Railroad Company, by—
BYRON KILBOURN, *President.*
JACKSON HADLEY, *Secretary.*
S. CHAMBERLAIN. [L. S.]

LA CROSSE AND MILWAUKEE R. R. Co.,
Secretary's Office, Milwaukee, April 23, 1858.

I hereby certify that the foregoing resolution is a true copy of a resolution adopted by the board of directors of this company at a special meeting held at Milwaukee on the 26th day of September, 1857,

and that the preceding contract is a true and correct copy of, and the whole of the contract therein referred to, as appears from the recorded minutes.

RICHARD DOTY, *Secretary.*

232 Circuit court of the United States for the 9th circuit and district of Wisconsin.

FREDERICK P. JAMES *et als.*
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company and others.

The respective parties to this cause, signing this stipulation, hereby agree that on the hearing of this cause either party may read in evidence this stipulation to prove, subject to the complainants' right to object thereto, or to any fact or thing hereby admitted for immateriality and irrelevancy, as follows:

1. That Newcomb Cleveland, a citizen of Illinois, on the 31st day of October, A. D. 1857, exhibited in the district court of the United States for the district of Wisconsin his bill of complaint against the La Crosse and Milwaukee Railroad Company and others, a printed copy whereof is hereto attached and marked Exhibit No. 1; that process was duly issued and served, and that Selah Chamberlain, a citizen of the State of Ohio, defendant to said bill, appeared in said cause and filed his answer to said bill, a printed copy whereof is hereto attached and marked Exhibit No. 2, No. 2; and that such proceedings were thereupon had in said court that upon the said bill of complaint of said Cleveland, answers, replications, and proofs the said district court did, on the 11th day of February, A. D. 1859, pass and render a final decree therein, a copy of which is hereto attached and marked Exhibit No. 3, and that decree remains in full force, unannulled and unreversed, and that no petition for rehearing therein or appeal therefrom is now pending.

2. That any mistakes that may be discovered in the printing of any of the exhibits hereto attached may be corrected at any time by either party.

3. This stipulation is made to dispense with the expense of procuring an exemplification of the record in said cause, and the complainant does not waive any right to object that the facts hereby established are immaterial or irrelevant, but waives all objections that the said exhibits are copies and not their respective originals, or that the full record is not produced.

Dated December 31, 1864.

FINCHES, LYNDE & MILLER,
Sol'rs for Compl'ts.
M. H. CARPENTER,
Sol. for Mil. and Minn. R. R. Co.

233 *Exhibit No.* 1.—*Bill of complaint.*

To the Judge of the district court of the United States for the district of Wisconsin, in equity:

Newcomb Cleveland, of the State of Illinois, and a citizen of said State of Illinois, brings this his bill against the La Crosse and Milwaukee Railroad Company, a corporate body created and existing by and under the laws of the State of Wisconsin, and Byron Kilbourn, Moses Kneeland, James Ludington, D. C. Freeman, Charles D. Nash, citizens of the State of Wisconsin, and Selah Chamberlain, of the State of Ohio, and a citizen of the State of Ohio, defendants.

And thereupon your orator complains and says that heretofore, to wit, on the 7th day of October, A. D. 1857, in the district court of the United States for the district of Wisconsin, by the consideration and judgment of said court, your orator recovered against the said La Crosse and Milwaukee Railroad Company the sum of one hundred twelve thousand two hundred and seventy-one dollars and seventy-six cents for the damages which he had sustained, as well by the breaches of the said company defendant's several covenants to and with your orator as for the costs and charges of your orator by him about his suit in that behalf expended, which were adjudged to your orator in and by said court, whereof the said company defendant was convicted on the day and year last aforesaid, as by the record of said judgment in the office of the clerk of said court, (reference being thereto had, and to which for greater certainty your orator prays leave to refer,) will more fully and at large appear.

And your orator further shows unto your honor, that said judgment so recovered as aforesaid remaining in full force and unpaid, and the whole amount thereof remaining unpaid and unsatisfied, your orator, on or about the 22d day of October, A. D. 1857, for the purpose of obtaining satisfaction of said judgment, sued and prosecuted out of the said district court a writ called a writ of fieri facias, directed to the marshal of said district of Wisconsin, by which said writ the said mar-

234 shal was commanded that of the goods and chattels of the said La Crosse and Milwaukee Railroad Company, defendant, in his district, he should cause to be made the sum aforesaid, recovered as aforesaid, by your orator; and that if sufficient goods and chattels could not be found, then to cause the said amount to be made of the lands and tenements of said company defendant, which it had at the time of docketing said judgment, to wit, on the 7th day of October, A. D. 1857, or at any time thereafter, and was afterwards, to wit, on the 22d day of October, A. D. 1857, delivered to the said marshal to be executed in due form of law; and that afterwards, to wit, on or about the 27th day of October, A. D. 1857, the said marshal levied said writ of fieri facias upon the following described property, to wit, at the city of Milwaukee, in said district, that is to say:

The La Crosse and Milwaukee railroad, and all the interest of the La Crosse and Milwaukee Railroad Company therein, with all the franchises, rights, and privileges thereunto belonging and appertaining, including roads, roadways, rights of way, and real estate of every

description, road-beds, tracks, ties, rails, station-houses, and buildings and ground, sheds and grounds, engine-houses and grounds, shops and grounds, water-houses and grounds, cars and appurtenances, locomotive engines and appurtenances, more particularly described as follows, viz: One passenger depot, one storehouse, two freight depots, grain platform and sheds, blacksmith shop, three tank-houses, machine shop, stationary engine-house, paint shop, lumber-house, coppersmith shop, iron house, blacksmith shop, turntable, circular engine-house, car shop, all in the city of Milwaukee; tank-house on section 12 of said railroad; one ditto, on section 22; passenger and freight depot at Richfield; one turntable and passenger and freight depot at Schleissengerville; engine-house, tank-house, and passenger and freight depot at Hartford; passenger and freight depot at Rubicon; passenger and freight depot and tank-house at Woodland; ditto, at Iron Ridge; turntable, passenger, and freight depot, engine-house, and tank-house at Horicon; passenger and freight depot at Junction; ditto, at Rolling Prairie; turntable, engine-house, tank-house, and passenger and freight depot at Beaver Dam; passenger and freight depot and tank-house at Fox Lake; passenger and freight depot at Cambria; passenger and freight depot, turntable, tank-house and engine-house at Midland; passenger and freight depot, turntable, engine-house, and tank-house at Portage City; together with the grounds upon which such houses and buildings are situated, and which are appurtenant thereto; 21 locomotive engines, 10 first-class passenger cars, 2 second-class ditto, 4 baggage cars, 164 house freight cars, 120 platform cars, 30 gravel cars, and 17 hand cars. Also all that portion of the La Crosse and Milwaukee railroad known as the Watertown division of said railroad, and all the interest of the said La Crosse and Milwaukee Railroad Company therein, with all the franchises, rights, and privileges thereunto appertaining, including roads, roadways, rights of way, and real estate of every description, road-
235 beds, tracks, ties, rails, station-houses, buildings and grounds, shops and grounds, water-houses and grounds, engine-houses and grounds, cars and appurtenances, locomotives and appurtenances; also about 45,000 bars of railroad iron, more particularly described as follows, viz: one engine-house, in the city of Milwaukee; one station-house, at the Junction; one ditto and wood-shed, at Pewaukie; one station-house, at Hartland; one ditto at Pine Lake station; one water-house, one wood-shed, and one station-house, at Oconomowoc; one station-house, frame shed, machine shop, car shop, blacksmith shop, two water-houses, engine-house, and wood-shed, at Watertown; station-house and water-house, at Lowell; station-house, engine, and water-house, at Columbus; together with the grounds upon which such houses and buildings are situated, or which are appurtenant thereto; 7 locomotive engines, 67 box cars; 35 rack cars; 10 hand cars, 4 passenger cars and 2 baggage cars, 20 dump cars, about 42,612 bars of railroad iron, lying piled on lots in blocks 40 and 41 in the 2d ward in the city of Milwaukee; also lots 9, 10, and 11 in block 3, and lots 1, 2, and 3 in block 47, in the 5th ward of the city of Milwaukee; lots 1 and 4 in block 156; lots 1, 2, 4, 5,

6, 7, 8, 9, 10, 11, 12, 13, 14 in block 155; ½ of block 157, except lot 8 and the bayou adjoining said block; ½ of lots 8, 9, and 10, all of lots 12, 13, and 14, ½ of lots 16 and 17, and E. half of 15, in block 158, in the 4th ward of the city of Milwaukee. All of which said property was then and there, to wit, at the time of said levy, situated in said district of Wisconsin, and was the property, goods, chattels, rights, franchises, lands, and property of the said La Crosse Railroad Company, subject to levy of execution, or fieri facias, in manner and form as aforesaid; and all of which said property, the said marshal afterwards, to wit, on the 30th day of October, A. D. 1857, advertised for sale at public auction, according to law, to satisfy said writ, to wit, on the 15th day of December, A. D. 1857, at the said marshal's office, in the said city of Milwaukee, in said district, at the hour of 10 o'clock a. m. of that day, as the law in that behalf requires, as by the said writ of fieri facias, and the direction and certificate of said marshal thereon indorsed, and now in the hands of the said marshal, will more fully appear, and to which, or a copy thereof, your orator prays leave to refer.

And your orator further shows, that the whole of said judgment yet remains unpaid and unsatisfied, and that said judgment remains in full force, unreversed and unannulled, and that no part of the said judgment has been paid to your orator, but that to pay the same the said defendant company ever has and still does neglect and refuse; and your orator shows, that there is now, equitably and actually, due to your orator on said judgment the sum of one hundred and twelve thousand two hundred and seventy-one dollars and seventy six-cents, together with interest on the sum of one hundred eleven thousand seven hundred and twenty-seven dollars and seventy-one cents
236 thereof, from the day of the rendition of said judgment, as aforesaid, over and above all just claims of the said the La Crosse and Milwaukee Railroad Company, defendant, by way of offset or otherwise; and that this bill is not exhibited by collusion with the said the La Crosse and Milwaukee Railroad Company, nor for the purpose of protecting the property, rights, or effects of said company defendant, nor any part thereof, against the claims of other creditors, but for the sole purpose of obtaining the relief hereinafter prayed. And your orator further shows, that the said the La Crosse and Milwaukee Railrood Company, defendant, at Milwaukee, in said district, heretofore, to wit, on the 26th day of September, A. D. 1857, designing and intending to injure, delay, cheat, and defraud the creditors of said company, and to injury, delay, cheat, hinder, and defraud your orator of his just debt and damages against said company, did pretend to make, and in form did make, seal, execute, and deliver to one Selah Chamberlain, (whom your orator prays may be made a defendant to this bill,) a pretended lease, in and by which said lease, dated the day and year last aforesaid, the said La Crosse and Milwaukee railroad pretended to, and did express, that it, said company, did sell and convey to said Selah all its personal property, of every name, kind, and description, in the State district of Wisconsin, except all such personal property as was then used in, and was then

appurtenant to, the operation of what is known and called the Watertown division of the La Crosse and Milwaukee railroad, and did pretend to, and in said lease did express that it, said company, did, let and lease to said Selah, from and after the 30th day of September, A. D. 1857, for an indefinite term of time, to be determined in the manner thereinafter specified, its, said company's, entire railroad and railroad route, from the city of Milwaukee, by way of Horicon and Portage City, to the city of La Crosse, together with its, said company's, rights of way, depot grounds, and all buildings, tenements, and fixtures of whatever kind or description, connected therewith or appurtenant thereto, together with all estate, rights, privileges, and appurtenances and franchise connected therewith, or belonging or incident thereto, subject only to such prior or superior liens as might, or did exist thereon, and all their existing contracts and agreements with any other company whose railroad connects with the La Crosse and Milwaukee railroad; which said pretended lease contained many covenants and agreements between said company and said Selah, intended, as your orator is informed and believes, and therefore says, to make said lease look and seem more specious and circumstantial, and to cover still deeper the fraudulent design of said company in making said lease. And your orator further shows to the court, that after the making and delivery to said Selah of said lease as aforesaid, to wit on the day and year last aforesaid, the said Selah entered into possession of all the property, rights, privileges, and franchises described, enumerated, and mentioned in said lease, and ever since has taken and received, and is now taking and receiving, all tolls and profits, income and revenue of said company's said railroad and
237 other property described in said lease aforesaid. Your orator is informed and believes, and therefore so says, that said company had no legal right or competent authority to make said lease; that the same was made to delay and defraud your orator, as a creditor of said company, and is directly in fraud of his rights; and constitutes, in connexion with said Selah's possession and claim of title thereto under the same, a cloud upon your orator's right to sell said property, on your orator's said writ of fieri facias, and seems to be, and is, an impediment in the way of your orator's said writ; and that said Selah is now in possession of all the said property, rights, franchises, and privileges and claims, and pretends to be the absolute owner of all the said personal property, so expressed in said lease to be sold to him, said Selah. And your orator further shows, that at Milwaukee, in said district heretofore, to wit, on the 30th day of September, A. D. 1857, the said company defendant, designing and intending to cheat and hinder, delay and defraud your orator, and the creditors of the said company, did pretend to, and in form did make, subscribe, seal, and deliver to one D. C. Freeman, whom your orator prays may be made a defendant to this bill, a lease or instrument in writing, in which said lease the said company did pretend to and did express that it did then and there and thereby sell and convey to said Freeman all its personal property, of every name, kind, and description, in the State of Wisconsin, used in and

appurtenant to the operation of the Watertown division of the La Crosse and Milwaukee railroad; and said company did therein and thereby also pretend and express, that it did thereby lease and let unto said Freeman, from and after the day and year last aforesaid, for the term of one year then next ensuing, its entire railroad and railroad route, from the city of Milwaukee, by the way of Watertown and Columbus, to Mainland in the county of Columbia, and commonly called and known as the Watertown division of the La Crosse and Milwaukee railroad, together with its right of way, depot grounds, and all buildings and tenements, of whatever kind and description, connected therewith, or belonging or incident thereto; which said pretended lease contains many mutual covenants between *between* said company and said Freeman.

Your orator says that he is informed and believes, and so says, that said company had no legal authority to make said lease, and that the same was made and delivered by said defendant with intent to delay, hinder, and defraud its creditors, as the said Freeman, when he received the same, to wit, on the 30th day of September, A. D. 1857, well knew. Your orator further shows, that said Freeman, immediately after the execution and delivery to him of said lease, did take possession of all the property enumerated in said lease, and ever since has and now does claim to and does receive all tolls, revenue, and profits arising from the property in said lease enumerated,
which is part of the property levied on by said marshal under
238 your orator's said writ of fieri facias as hereinbefore stated; and that said lease, which was, on the 2d day of October, A. D. 1857, recorded in the office of the secretary of state of the State of Wisconsin, and the possession and claim of right of said Freeman under said lease, are a cloud upon your orator's right to sell said property on the writ of fieri facias issued in his favor as aforesaid, and are an impediment in the way of the execution of said writ. Your orator further shows, that heretofore, to wit, on the 2d day of October, A. D. 1857, (while the trial of the issues joined, in the action in which your orator recovered the said judgment hereinbefore mentioned, was proceeding in said court, and after it had become apparent that your orator would recover a large sum of money in said action,) the said the La Crosse and Milwaukee Railroad Company, defendant, intending and designing to cheat and defraud your orator as a creditor of said company defendant, and to prevent your orator from collecting any judgment he might recover in said action, and to delay, hinder, put off, cheat, and defraud the creditors of said company defendant, did, to wit, at the city of Milwaukee in said district, suffer a judgment to pass against it, said company defendant, by confession, in the said district court of the United States for the said district of Wisconsin, in favor of said Selah Chamberlain, without service of process or suit brought, for the sum of six hundred and twenty-nine thousand and eighty-nine dollars and seventy-two cents damages, and fifteen dollars and fifty cents costs—in all, for the sum of six hundred and twenty-nine thousand one hundred and five dollars and twenty-two cents, which said judgment, fraudulently suffered as

aforesaid, was duly and regularly entered and docketed in said court, on the day and year last aforesaid, and appears and seems to be a lien and incumbrance upon all real property of the said defendant company within the said district of Wisconsin, including the real property hereinbefore described and levied upon as aforesaid. Your orator further shows, that he is informed and believes, and thereupon he says, that the said company defendant, when it so suffered said judgment to pass by confession in favor of said Chamberlain as aforesaid, was not indebted to said Chamberlain in the sum described and specified in said confession of judgment, and did not owe nor was indebted to said Chamberlain in a sum exceeding the sum of fifty thousand dollars, and that no consideration or value was ever received by, or at any time accrued to, said company defendant for said judgment above and beyond the sum of fifty thousand dollars, and that said judgment was by said company defendant suffered and permitted to pass and be entered and docketed as aforesaid, with the intent thereby to hinder, delay, defraud, and put off the creditors of said company defendant (and particularly to hinder, delay, and defraud your orator) by the pretence that said judgment was a good and valid lien upon all the real property of the said defendant company in said district; and your orator is informed and believes, and therefore says, that the said Chamberlain, when he so received the said lease, and when said judgment was entered
239 up and docketed in his favor as aforesaid, well knew that said company designed and intended thereby, respectively, to hinder, delay, cheat, and defraud its creditors (and particularly your orator;) that said Selah intended, when he so received said lease and said confession of judgment, respectively, to thereby respectively injure, defraud, and delay your orator, and that the said Selah has sued out writ of fieri facias on said judgment in his favor, and is now threatening to sell, under the same, the railroad iron levied on by your orator as aforesaid, of great value, to wit, of the value of four hundred and twenty thousand dollars.

Your orator further shows that on or about the 15th day of June, A. D. 1856, the said company defendant was the sole owner and seized in fee of each and every of the said lots of land, city lots in the city of Milwaukee, in said district, hereinbefore particularly described, and on which said marshal has levied your orator's writ of fieri facias as hereinbefore set forth, and that said lands were then and there of great value, to wit, the value of one hundred thousand dollars and upwards; and that Byron Kilbourn, Moses Kneeland, and James Ludington were three of the directors of said company defendant on the day and year last aforesaid; and that on or about the day and year last aforesaid, while said company defendant was so seized of said land, the said Moses Kneeland and James Ludington were appointed by the board of directors of said company defendant, or by the executive committee of said board, (which said board was composed of the said Kilbourn, said Kneeland, said Ludington and others,) a committee to sell and dispose of said lands, worth at that time to the said company (as the said Kilbourn, Kneeland, and said Ludington then

well knew) more than one hundred thousand dollars; and your orator is informed and believes, and therefore says, that the said Kneeland and said Ludington then and there designing and intending to injure and defraud said company and its creditors, and disregarding their duty as directors as aforesaid in the premises, and intending unlawfully and fraudulently to acquire to themselves and the said Kilbourn, by a violation of their duty as directors as aforesaid, the said lands, for a grossly inadequate price did sell and transfer said lands, worth, as they then and there well knew, more than one hundred thousand dollars, to one Charles D. Nash for the nominal consideration of twenty thousand dollars in bonds or stock of said company defendant; but that said Kilbourn, said Kneeland, and said Ludington, or one of them, furnished to said Nash, directly or indirectly, whatever the said Nash pretended to pay to said company for said lands, and that said sale was made to said Nash with the fraudulent secret arrangement and understanding between said Nash and said Kilbourn, said Kneeland and said Ludington, or one of them, that said Nash should thereafter, when requested by said Kilbourn, Kneeland, or Ludington, convey and transfer said lands to said Kneeland, said Kilbourn, or said Ludington for the benefit of said Kilbourn, Kneeland, and Ludington for a nominal or no consideration, and that said Nash was wholly disinterested in said pretended sale to him of said land, and that soon after the conveyance of said lands to said Nash that the said Nash did, in pursuance of said fraudulent and corrupt arrangement hereinbefore stated, convey and transfer said lands to said Kneeland for no consideration, or a nominal or pretended consideration; that said Kneeland, soon after the conveyance aforesaid to him, conveyed and transferred to said Ludington one-third of said land for no consideration or for a nominal and pretended consideration, but really in pursuance of said corrupt agreement, and that said Kneeland now holds a record title to two-thirds of said land for himself and the said Kilbourn; that said Kneeland, said Kilbourn, and said Ludington pretend to hold these lands as aforesaid, which are now worth more than two hundred thousand dollars, in fraud of your orator's rights as a creditor of said company, and by reason of a violation of their duty as directors as aforesaid and trustees of the same property, and that the same ought to be applied to the payment of your orator's said judgment. To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to all and singular the matters, things, statements, and charges aforesaid, and that, too, as particularly as if the same were here again repeated paragraph by paragraph, and they thereunto particularly interrogated, and that they may also make answer as aforesaid to the several interrogatories hereinafter set forth and numbered as by the note hereunder written they are respectively required to answer, that is to say:

1. Whether your orator did or did not receive a judgment as here-

inbefore stated and for the amount hereinbefore stated? and whether the said proceedings under the said judgment have been taken respectively as set forth in said bill?

2. And whether the amount as hereinbefore stated is or not now equitably due on said judgment?

3. Whether or not said company defendant did, on the 26th day September, A. D. 1857, make, execute, seal, and deliver to said Chamberlain a pretended lease or other instrument in writing, dated on that day or some other day, by which said company defendant did sell and convey to said Chamberlain all of said company's personal property, of every name, kind, and description, in the State district of Wisconsin, except all such personal property as was then used in and was appurtenant to what is known and called the Watertown division of the La Crosse and Milwaukee railroad? and whether or not said company defendant did in said lease pretend to and express that it did then and there lease to said Chamberlain, from and after the 30th day of September, A. D. 1857, for an indefinite term and time, to be determined in the manner therein specified, its, said company's,
241 entire railroad and railroad route from the city of Milwaukee by way of Horicon and Portage City to the city of La Crosse, together with said company's right of way, depot, grounds, and all buildings, tenements, and fixtures, of whatever kind or description, connected therewith or appurtenant thereto, together with all estate, rights, privileges, and appurtenances and franchise connected therewith or belonging or incident thereto? And state definitely all the terms, provisions, and conditions of said lease or instrument in writing, and set forth a copy thereof.

4. Whether or not the said Chamberlain, after the making and delivering to him of the said lease or instrument in writing, entered into possession and enjoyment of all the property, rights, privileges, franchises enumerated and mentioned in said lease or instrument in writing, and whether said Chamberlain has ever since taken and received, and is now taking and receiving, all tolls, profits, income, and revenue of said company's said railroad and other property described in said lease aforesaid?

5. Whethor or not there was any, and if any what, consideration or advantage paid, accruing, or resulting to said company defendant for the making and delivery of said lease or instrument in writing to the said Chamberlain, other than that appearing upon the said lease? If so, what? State fully.

6. Whether or not the said Chamberlain now claims and pretends to be the absolute owner of any, and if any what, portion of the property described and enumerated in said lease or instrument in writing?

7. Whether or not, on the 2d day of October, A. D. 1857, or any other day, the said company defendant did, at Milwaukee, in said district, suffer a judgment to pass against it, said company defendant, by confession or otherwise, in the said district court of the United States for the said district of Wisconsin, in favor of said Selah Chamberlain, without service of process or suit brought, or otherwise, for the

sum of six hundred and twenty-nine thousand one hundred and five dollars, or any other or what other sum? and for what cause, upon what claim, contract, debt, right, or cause of action was the said judgment confessed? or if upon and for different claims, contracts, and causes of action, state definitely and fully each, every, and all of said claims, rights, or contracts, and state fully when, where, and for what cause, and upon what consideration, and under what circumstances, each and every right, claim, and contract for which said judgment was confessed, accrued.

8. Whether or not said company was indebted to the said Chamberlain at the time of suffering said judgment; and if so, upon what contract, express or implied, when, how, and where, and upon what consideration entered into? And set forth definitely, fully, and certainly each and every item of indebtedness of said company to said Chamberlain embraced in said judgment; and set forth fully how, when, where, and for what each and every of said items of indebtedness accrued.

242 9. Whether or not there was any dealings and transactions between the said Chamberlain and the said company defendant at the time of suffering the said judgment as aforesaid, or any previous time? and what was the state, account, and balance of such transaction, of what items did they consist, to what subject-matter did they relate, what claims had the said company against the said Chamberlain for money, bond, mortgage, stock, or other things of value loaned or paid to, or in any way or manner intrusted with the said Chamberlain by said company defendant? and what claims or items of account had the said Chamberlain against the said company? what was the date, amount, and nature thereof, when, where, and for what did they accrue? and whether any accounting or settlement was had by and between the said Chamberlain and the said company defendant at the time of suffering said judgment, or at any previous time? and if any such accounting or settlement was had as aforesaid, in whose presence it was had, by whom was it conducted on the part of said company, when and where was it had, how long time was employed in such settlement, and what were the items and charges thus settled and accounted on each side, and what was the balance and in whose favor ascertained?

10. Whether or not any other person or persons than the said Chamberlain are, directly or indirectly, interested in said judgment so suffered as aforesaid? and whether or not the said Byron Kilbourn, Moses Kneeland, and James Ludington, or either of them or any other person, and if any other, who, have any interest, directly or indirectly, in said judgment so suffered as aforesaid? and if neither of the persons above named all not directly and in form concerned or interested in said judgment with said Chamberlain, whether there is not a secret understanding, an arrangement, that they or either of them shall enjoy, and shall in some way and at some time, a part of said judgment, if the same shall be collected?

11. Whether or not said Chamberlain has sued out a writ of fieri facias on the judgment so suffered in his favor, and caused the same

to be levied upon, and is threatening and intending to sell to satisfy said writ some part of the property hereinbefore described?

12. Whether or not the said company defendant, on or about the fifteenth day of June, A. D. 1857, or at any other time, was the owner and seized in fee or otherwise, and how otherwise interested, in the said several lots of land or either of them in the said city of Milwaukee hereinbefore described in said bill, namely, lots nine, ten, and eleven in block three, and lots one, two, and 3 in block 47, in the 5th ward of the city of Milwaukee; lots 1 and 4 in block 156; lots 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 in block 155; $\frac{1}{8}$ of block 157, except lot 8, and $\frac{1}{2}$ of the bayou adjoining said lot; $\frac{1}{8}$ of lots 9 and 10; all of lots 12, 13, and 14; $\frac{1}{2}$ of lots 16 and 17, and E. $\frac{1}{2}$ of 15 in block 158, in the 4th ward of the city of Milwaukee, or some part thereof, or some part of some of said lots, and what was the value of said lands respectively? and whether the said Byron
243 Kilbourn, Moses Kneeland, and James Ludington, or either of them, were directors of said company defendant, while it was so interested in said lands? and whether, on the day and year last aforesaid, or on some other day, while the said company defendant was so seized of or in some way interested in said land, and while the said Kilbourn, said Kneeland, and said Ludington were directors of said company defendant, the said Moses Kneeland and James Ludington were appointed by the board of directors of said company defendant, or by the executive committee of said board, a committee to sell and dispose of the said land herein above described? and whether said Kneeland and said Ludington made a contract of sale, either in writing or by parol, which was subsequently ratified and executed by said company defendant, agreeing to sell the said lands to one Charles D. Nash? And if so, for what sum and consideration were the said lands sold to said Nash? How did he pay therefor, in money, or in bonds, mortgages, stocks, or whatever thing of value? Where did the said Nash obtain what he paid therefor? and was it not directly or indirectly understood at the time of said pretended sale to said Nash, that he, said Nash, should thereafter, at some time and upon same terms, and if so, what time and what terms, convey said lands to said Kilbourn, said Kneeland, or said Ludington?

13. Whether the said Nash, after the said conveyance to him, did convey said lands, or any part thereof, to said Moses Kneeland? If so, state when said conveyance was made, what consideration, if any, did the said Kneeland pay to the said Nash; was it paid in money, notes, bonds, mortgages, or other and what other thing of value? and if said Kneeland paid any consideration for such conveyance to him, what did the said Nash do with, and how did he dispose of the same? and did not the same, in some way or in some form, or under some color or device, return to the said Kneeland, or to some other person for the said Kneeland's benefit?

14. Whether any consideration was paid to the said Nash, and if so, whether it was all paid by the said Kneeland, and whether the said Kilbourn, or the said Ludington, paid any part thereof, or contributed in any manner thereto?

15. Whether the said Kneeland, at any time and what time, after said conveyance to him, conveyed one-third of or any interest in and (if any, what portion and what interest) of said lands so conveyed to him to the said James Ludington? and what consideration did the said Ludington pay to said Kneeland therefor? When, where, and in whose presence was it paid? Was it paid in money, notes, bonds, mortgages, or other (and what other) thing of value? and what did the said Kneeland do therewith, and how dispose thereof? and did not the same, in some way, or under some cover or device, return to the said Ludington, or to some other person or persons for his benefit?

16. Whether the said Byron Kilbourn, Moses Kneeland, and James Ludington, or either of them, claim to own or to be
244 interested in said lands, or any part thereof? and what part or what interest therein does the said Kneeland, the said Kilbourn, and the said Ludington, respectively, claim to have or hold of or in the said lands? and what is the value of the portion thereof or interest therein, held or claimed by the said Kneeland, the said Kilbourn, and the said Ludington, respectively, and what is the present aggregate value of said lands?

17. Whether or not the said company defendant did, on the 30th day of September, A. D. 1857, or any other day, make and deliver to said Freeman a lease or instrument in writing, as set forth in this bill? and whether the said Freeman paid any consideration to said company for said lease? and if so, what consideration? When, how, and in what manner was it paid? and for what reason, and upon what motive was said lease given to said Freeman?

18. Whether there is any secret agreement, understanding, or arrangement that any other (and what other) person than the said Freeman, should be interested in, or in any way shall the profit and avail of said lease to said Freeman?

And that the said pretended lease to said Chamberlain, may be decreed and declared to be illegal, unauthorized, fraudulent, and void as to your orator, and that the said Chamberlain may be decreed to account for and pay over to your orator, or to a receiver to be appointed in this cause, to be applied in payment of your orator's said judgment, all the tolls, profits, incomes, and revenue which have or may accrue to the said Chamberlain, from his use and possession under the lease as aforesaid; and that the said Chamberlain may be decreed to surrender all claim, right, title, and property under said lease, and that the said lease may be cancelled; and that the said Chamberlain, and all persons claiming by, through, or under him, may be perpetually enjoined from setting up or making any claim under said lease; and that the said judgment in favor of the said Chamberlain may be declared to be fraudulent, and as to your orator wholly void; and that the same may be reversed, annulled, and utterly held at naught; that all proceedings under said judgment may be set aside; that the said Chamberlain and all persons for him, or claiming by, through, or under him, may be perpetually enjoined from setting up any claim or right under said judgment, and from all

measures to collect or enforce the same as against your orator; that the several lots of land hereinbefore particularly described may be decreed and declared subject to the lien of your orator's said judgment, and that your orator's said judgment may be declared to be a lien upon all of said lands, and all real property owned by the said company defendant in the said district of Wisconsin, and described herein before and in said lease; and that your orator may be decreed and declared to be authorized to sell all of said lots of land hereinbefore described, or so much thereof as shall be necessary to satisfy his said judgment, and that the said Kneeland, the said Kilbourn, and the said Ludington, may be decreed to join in the conveyance of the land (or so much thereof as shall be sold) to the purchasers at
245 said sale, and that the said Kilbourn, the said Kneeland, and the said Ludington, and all persons for them, or either of them, or claiming by, through, or under them, or either of them, be perpetually enjoined from making or pretending any right to or interest or estate therein; and that said conveyances of said land be declared null and void, and that your orator may have such other and further relief as the nature of his case may require, and as shall be agreeable to equity and good conscience, and that the said Chamberlain, and the said Kilbourn, and the said Kneeland, and the said Ludington may each and every of them be strictly enjoined and prohibited from selling, transferring, conveying, leasing, incumbering, or in any way interfering or intermeddling with any of the said property hereinbefore described and held, claimed, enjoyed, or possessed by them respectively, or by any other person or persons for them, or either of them; and that a receiver may be appointed with the usual powers of a receiver, according to the practice of said court; and that said lease to said Freeman may be decreed and declared fraudulent and void, and that the said Freeman, and all persons claiming by, through, and under him, may be enjoined from claiming any right under said pretended lease to him, and that the said lease to him may be cancelled, and he be compelled and decreed to relinquish all possession of property in the said lease enumerated, and that the said Freeman may be enjoined from leasing, selling, incumbering, mortgaging, disposing of, or intermeddling with said property enumerated in said lease to him, said Freeman.

May it please your honor to grant unto your orator a writ of injunction issuing out of and under the seal of the said court, directed to the said Byron Kilbourn, D. C. Freeman, Moses Kneeland, James Ludington, and Selah Chamberlain, defendants, their counsellors, attorneys, solicitors, and agents, commanding and strictly enjoining them in the manner hereinbefore mentioned, under a certain penalty, until the further order of the court.

May it please your honor to grant unto your orator a writ of subpœna, issuing out of and under the seal of said court, to be directed to the said La Crosse and Milwaukee railroad, Byron Kilbourn, D. C. Freeman, Moses Kneeland, James Ludington, and Selah Chamberlain, Charles D. Nash, defendants, commanding them and each of them, by a certain day and under a certain penalty therein to be

named and inserted, to be and appear in said court, at the court-house of said court, in the city of Milwaukee, in said district, and then and there to answer the premises; and further, to stand to and abide such order and decree therein as shall be agreeable to equity and good conscience, &c.

NEWCOMB CLEVELAND.
MAT. H. CARPENTER.
Solicitor for Complainant.
WM. P. LYNDE, *of Counsel.*

246 DISTRICT OF WISCONSIN, *ss:*

Newcomb Cleveland being personally before me, and being by me first duly sworn, this thirty-first day of October, A. D. 1857, deposed and swore, that he had heard read the foregoing bill of complaint by him subscribed, and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters stated to be on the information and belief of said complainant; and as to those matters, he believed it to be true.

JNO. A. SAVAGE, JR.,
U. S. Commissioner, District of Wisconsin.

The La Crosse Railroad Company is required to answer the interrogatories numbered 1, 2, 3, 4, 5, 7, 8, 9, 10, 12, 13, 17, 18. Defendant Kilbourn is required to answer the interrogatories numbered 1, 2, 3, 4, 5, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18. Defendant Moses Kneeland is required to answer the interrogatories numbered 1, 2, 3, 4, 5, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18. Defendant James Ludington is required to answer the interrogatories numbered 1, 2, 7, 8, 9, 10, 12, 13, 14, 15, 16. Defendant D. C. Freeman is required to answer the interrogatories numbered 1, 2, 17, and 18. Defendant Charles Nash is required to answer the interrogatories numbered 1, 2, 12, 13, 15. Defendant Selah Chamberlain is required to answer the interrogatories numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14.

247 *Exhibit No. 2.—Answer of Chamberlain.*

The district court of the United States for the district of Wisconsin, in chancery.

The separate answer of Selah Chamberlain, one of the defendants, to the bill of complaint of Newcomb Cleveland, complainant against this defendant, impleaded with the La Crosse and Milwaukee Railroad Company, Byron Kilbourn. Moses Kneeland, James Ludington, D. C. Freeman, and Chas. D. Nash, defendants.

This defendant, now and at all times saving and reserving unto himself all benefits and manner of exception to the many errors and imperfections in the said bill of complaint contained, for answer thereunto, or unto so much thereof as this defendant is advised it is material or necessary for him to make answer unto, answering, says :

That he has been informed, and believes it to be true, and therefore admits, that the complainant did recover a judgment against the

La Crosse and Milwaukee Railroad Company for the amount and in manner and form as in the bill of complaint alleged; but whether the whole, or any parts thereof, is still owing and due to the said complainant, this defendant has no knowledge or belief, nor has he been informed, save by the complainant in his bill of complaint; and this defendant leaves the complainant to his proofs in that regard. And this defendant, further answering, says he admits it to be true that the said La Crosse and Milwaukee Railroad Companies did, on or about the twenty-sixth day of September, in the year 1857, make, seal, execute, and deliver to this defendant a certain instrument in writing, and which this defendant believes to be the same which is mentioned and alluded to in the said bill of complaint as a pretended lease, the terms whereof are partially set forth in the complainant's bill, and wherein the terms and conditions of said instrument are in part truly set forth, and in a great part untruly alleged. That said instrument contains articles of agreement between this defendant and the said railroad company, and was on said day interchangeably executed in duplicate by them; but whether the same *the same* is in judgment of law a lease, this defendant is unadvised, and he humbly leaves this honorable court to contrue and give said contract its
248 legal operation and efficacy, according to the true and lawful intent of the parties thereto.

That said contract was entered into with the sole view and design of vesting in this defendant the right of possession, enjoyment, and use of all and singular the property, rights, privileges, franchises, and emoluments therein mentioned and expressed, and upon the terms and conditions therein expressed, as a surety for, to this defendant, and as a means of payment of, a large sum of indebtedness then due and owing from said railroad company to this defendant, the particulars whereof are hereinafter set forth and disclosed—a true copy of which said instrument, or contract, is hereunto annexed and marked "Schedule A." But this defendant expressly denies that the said instrument, or contract, was executed or entered into with any design or intent to injure, delay, cheat, or defraud the creditors of said railroad company, or that any convenants, agreements, or conditions were incorporated therein to cover any covinous or fraudulent design, or with a view or intent of giving the same any specious or circumstantial character. But on the contrary thereof, he avers that the said instrument was executed, and all the convenants and agreements therein contained were entered into, with the single purpose and design of creating for and affording to this defendant a security for just indebtedness as aforesaid, and upon the considerations blended therewith, which are hereinafter more particularly mentioned and disclosed; and he admits that thereunder, and on the first day of October last past, he entered into actual possession of all and *and* singular the property, rights, privileges, and franchises described in or contemplated by the said instrument or contract, and that he has employed and enjoyed the use and revenue thereof. But he nevertheless avers that he had the lawful right so to do, and that he has so done in all respects conformable to the terms and conditions of said contract and articles

of agreement. And this defendant, further answering, says he is advised, and he submits to this honorable court, that the said La Crosse and Milwaukee Railroad Company had lawful and competent power and authority to make and enter into the said contract and agreement with this defendant, and to do all things therein and thereby contemplated; and he denies that the same was or is in fraud of the complainant's rights as a creditor of said company, or that the same is a cloud upon his rights to sell upon execution any property of said railroad company subject thereto. But this defendant submits that, save as to personality, the complainant may levy and sell the property and interests of the said corporation subject to the rights of this defendant, as well and absolutely as though this defendant were not in possession thereof. And this defendant, further answering, says that on the twenty-sixth day of September, and contemporaneously with the said contract or agreement set forth herein as "Schedule A," there was entered into between this defendant and the said railroad company another agreement, a copy whereof is hereunto annexed and marked "Schedule B." And this defendant, further answering,
249 says it is true, and he therefore admits, that on or about the second day of October, in the year 1857, the said railroad company did suffer judgment to be entered against it, in the name and in favor of this defendant, for about the sum of six hundred and twenty-nine thousand one hundred and five dollars; but this defendant denies that said judgment was based on any fictitious consideration, or that the same was created with any intent or design to hinder, delay, or defraud the creditors of said railroad company, or with any fraudulent or illegal motive or purpose whatever. But on the contrary thereof, he avers the truth to be that said judgment was entered upon a promissory note executed by said railroad company to this defendant, with a warrant of attorney accompanying the same for confession of *of* judgment, for actual existing indebtedness from said railroad company to this defendant; and so far from said judgment being in whole or in part without consideration, or having been created upon any merely pretended or fictitious considerations in whole or in part, the said corporation was at the time in fact and still is indebted to this defendant in a much larger sum than is expressed in said judgment. The real and true considerations upon which such indebtedness accrued and was created is hereinafter fully set forth, and is as follows: On or about the twentieth day of November, in the year 1856, this defendant entered into a contract with the said corporation, whereby this defendant was to do and perform certain labor and services for said corporation in the ballasting of its railway track between the city of Beaver Dam and Portage City in Wisconsin, being part of that portion of said railroad known as the "eastern division," upon the terms and at the rates and the prices fixed in said contract, a true copy whereof is hereunto annexed and marked "Schedule C."

This defendant performed said contract, and the amount, character, and value of the work done by him thereunder appears by the final estimate of E. W. Woodward, esq., the chief engineer of said railroad company, a true copy whereof is hereunto annexed, and marked

"Schedule D." In addition thereto this defendant did and performed in and about such work, extra labor and services, and furnished and provided means and materials therefor, and for which bills or invoices were from time to time rendered by this defendant to said company, the aggregate whereof appears in the account hereinafter referred to, but the items and particulars whereof appear in the papers hereunto annexed and marked, respectively, papers 1, 2, 3, 4, 5. The aggregate amount accruing to this defendant for work done and performed, and for materials and means furnished in and about the work upon said eastern division, is about the sum of one hundred and twenty-four thousand eight hundred and fifty-six dollars and sixty-four cents; and all the payments made to this defendant thereon appear in his general account, hereinafter more particularly referred to. On or about the twentieth day of January, in the year 1857, this defendant entered into another contract with the said corporation for the construction, by this defendant, of that portion of the rail-
250 road of said corporation known as the "western division," and extending from Portage City aforesaid to La Crosse in Wisconsin, the terminus of said road, for the prices and upon the terms and conditions expressed in said contract, a true copy whereof is hereunto annexed, and marked "Schedule E." This defendant entered upon the work contemplated by the last-mentioned contract in the month of February thereafter, and continued to prosecute the same under and pursuant to said contract and another contract or agreement supplemental thereto and modifying the original in some particulars, entered into between this defendant and said corporation on or about the thirteenth day of April, in the year 1857, a true copy of which supplemental contract is hereunto annexed, and marked "Schedule A, A," until about the twenty-sixth day of September last past, when said original contract and supplement were still further modified by the contract or agreement hereinbefore referred to, and a copy whereof is annexed as aforesaid, and marked "Schedule B."

And this defendant avers that the value of the work, labor, and services by him performed and rendered, under said construction contract and supplement, governed by the rates and prices stipulated for in said contracts, and inclusive of what remains to be done by this defendant to complete the work to New Lisbon, as contemplated in the contract hereinbefore set forth as "Schedule B," amounted to the sum of one million seventy-six thousand four hundred and fifty dollars; and the nature, character, and particulars of such work appears in the final estimate of Mr. Woodward, the said chief engineer, a true copy whereof is hereunto annexed, and marked "Schedule F," and all the payments which have ever at any time been made thereon truly appear in the said general accounts, hereinafter more particularly referred to. The amount of work remaining undone and necessary to be done to complete said road to New Lisbon as aforesaid, according to said contracts, as modified, was, as appears by the estimate of the chief engineer aforesaid, on the first day of October last past, in [illegible] rates and prices stipulated for [illegible] l contracts, [illegible] um was de-

ducted in the settlement and adjustment of accounts between this defendant and said corporation, as hereinafter mentioned. A true copy of the estimates of said engineer of incompleted work aforesaid is hereunto annexed, and marked "Schedule I;" and this defendant avers that the sum expressed in the said judgment confessed to him was the amount actually ascertained to be due to him on the said first day of October, from the said railroad company, for work, labor, and services, and materials furnished under said contracts. And this defendant, further answering, says that said corporation was largely in arrear to him during the months of July, August, and September last past, but the aggregate of which arrearages were not actually ascertained, from the fact that no final estimate of the work done by him had been made, and from the circumstances that monthly estimates provided for in said construction contracts were, as is usual in
251 such cases, merely approximate, and always really intended as under-estimates. That this defendant was, however, aware that the indebtedness of said corporation to him was large, default having been made in the payment of the monthly estimates, as provided for in said contracts; but this defendant was put off with partial payments and assurances from the officers and agents of said company of their intention and ability soon to liquidate, or nearly so, the indebtedness to this defendant; he had made frequent applications for payment or security, and repeatedly suggested and urged the security which was ultimately given by means of the contract set forth in "Schedule A;" but the officers refused from time to time, on the ground alleged, that it would injure the credit of the corporation; and matters went on thus until about the first day of September last past. The arrearage of said company becoming so large, and constantly increasing, this defendant threatened legal proceedings against said company, and visited Milwaukee with a view of taking professional advice, and, if possible, of securing his claim by levy on the railroad iron, which is mentioned in the bill of complaint.

That this defendant communicated his design to the officers and some of the board of directors of said company, and he again urged upon them to place him in possession of the road, as mortgagee or otherwise, that he might receive and apply the income towards his indebtedness, but which was still declined; and they besought this defendant not to resort to such proceedings, as it would ruin the already impaired credit of the corporation. That they then contemplated mortgaging said iron as additional collateral security to certain bonds of the company which were in market, and when done would render reasonably certain the prospect of their negotiating something like a million of the corporation bonds for cash, negotiations for which were then pending and nearly complete, and which would relieve the company from its embarrassments. And the strongest assurances were given to this defendant of the success of such pending arrangements. And he was thereby induced to forego legal proceedings, upon the promise that out of the funds thus expected to be realized this defendant should receive the sum of one hundred and fifty thousand dollars, and that provision should be made for the speedy adjustment

of the balance due this defendant; and that all notes of said company, and of which he then held a large amount, to apply, when paid, on his account, should be provided for and paid. And with the further assurance and promise that in any event the said corporation would protect this defendant and secure to him the amount his due. That from the information which this defendant then received, and from what he has since learned, he has reason to believe that the assurances and promises which he then received were based on a reasonable and just expectation and belief on the part of the officers and directors of the said corporation that they would be able to fulfil them; and defendant is informed and believes that shortly thereafter the said company did execute a mortgage of said railroad iron to secure
252 certain land-grant bonds so denominated, but the terms and conditions of which he is unable to state.

That soon thereafter events happened which caused a shock to the monetary affairs of the country, and which ultimately led to the crisis and distrust which at present prevails therein; owing to which, as defendant was informed by the officers and agents of said company, they were unable to keep their engagements with him; and so believing, this defendant, shortly before the said twenty-sixth day of September last past, again applied to the officers and directors of the said corporation for adjustment and settlement of his accounts, and for security of the sum his due. They then told this defendant of their utter disappointment in all their expected arrangements, and admitted to him that they would be unable to pay him the amount due him at present; and furthermore, that in view of the unsettled state of the business and commerce of the country, they could not reasonably expect, for an indefinite time to come, to fulfil the engagements of said company in said construction contract contained; whereupon negotiations ensued between this defendant and the officers and directors of the said corporation, which led to the agreement that the said construction contract should be indefinitely suspended, and in view of the immense injury to be sustained by this defendant consequent thereupon, his damages were liquidated as expressed in the agreement therefor and hereinbefore set forth as "Schedule B," at the sum of two hundred thousand dollars; and this defendant again most urgently insisted on security, and that as a means thereof he should be let into possession of the entire road, and to receive the earnings to apply on his indebtedness, which was for a time resisted and declined; but finally, after much negotiation, this defendant's demand was acceded to in a modified form, and it was agreed, that in order to secure to this defendant the amount actually due to him from said corporation, he should be put in possession of the said La Crosse and Milwaukee railroad and appurtenances, described and expressed in "Schedule A," and entitled to receive and enjoy its net earnings and revenues for the objects and purposes expressed and contemplated in the contract or agreement, a copy whereof is set forth in "Schedule A" aforesaid. And the said contracts and agreements set forth in "Schedule A and B" aforesaid, were prepared and duly executed and delivered as aforesaid. That this defendant then de-

manded an immediate adjustment of the accounts between said corporation and this defendant, and which was, during the space of about three days thereafter, accomplished. That the board of directors of said corporation were present at such adjustment and settlement; this defendant and said chief engineer, most of the time.

It involved a critical examination of estimates and accounts, as contained on the books of this defendant and those of said corporation; and although this defendant claimed and still insists that a considerable larger amount was his due, the sum of six hundred and twenty-nine thousand and eighty-nine dollars and seventy-two cents was
253 finally agreed upon as the amount due this defendant for completed work under said contracts, and exclusive of said two hundred thousand dollars liquidated damages, and for which sum it was agreed that the promissory note of said corporation should be executed and delivered to this defendant, accompanied with a warrant of attorney for the entry of judgment, which was done accordingly; upon which this defendant caused judgment to be entered in this honorable court, on the law side thereof, as is hereinbefore set forth; and he admits that he caused execution to be issued thereon, and to be levied upon the said railroad iron, and upon that portion of the said La Crosse and Milwaukee railroad, its appurtenances, franchises, and privileges, known as the Watertown division, and all particularly described, as he believes, in the bill of complaint; and he avers that he had lawful right so to do, and that he was induced thereto in view of the large prior incumbrances upon the property and premises of which he was thus put in possession *of*, and of the large amounts to be paid out of the earnings and revenues of said railroad prior to any right of application thereof to the indebtedness of this defendant. And this defendant further answers and says, that he has annexed hereto a general statement of accounts between himself and said corporation, and growing out of the matters and contracts hereinbefore set forth, which shows the amount of the work, labor, and services, and materials by this defendant done and performed and furnished for and to corporation, under said ballasting and constructing contracts, as also all the payments ever made thereon, and all deductions proper to be made from the amounts therein charged or debited, and the surrender of all notes, bills, or securities held by this defendant prior to the first day of October aforesaid, and showing the balance due to this defendant on the said first day of October; said account is just and true in every particular, unless some slight errors or omissions have been created or have occurred therein, and if any such have or do occur, they are purely accidental and unintentional; and said account is annexed and marked "Schedule G." And this defendant, further answering, says that other than the considerations and motives hereinbefore narrated and set forth, there was no other consideration or advantage paid, according or resulting to said railroad company, for the making and delivery to this defendant, for the instrument or contract under which he took possession of said road, its premises, property, and franchises as aforesaid, unless it was the consideration by said corporation of the fact that the labor and

services of this defendant, and the materials by him furnished, and the large advances by him thereby made, to said corporation, had added value to all incumbrances upon its road and franchises, enhanced its wealth, and increased the prospects of its creditors ultimately being satisfied of their just dues, might have influenced a compliance with this defendant's request for such security. And this defendant, further answering, says he does not claim or pretend to be the absolute owner of the whole or any part of the property described or
254 enumerated in the contract or agreement in virtue of which he was placed in possession of said road and other property and premises therein described and enumerated, but on the contrary he has ever claimed to hold the same as security for his indebtedness aforesaid, and upon the trusts and for the sole uses and purposes described in said contract or agreement. And this defendant, further answering, says that neither the said Byron Kilbourn, Moses Kneeland, and James Ludington, or any one of them are, or ever were, directly or indirectly, interested or concerned in the said judgment of this defendant against said corporation, or in the other indebtedness mentioned hereinbefore; but on the contrary, this defendant is alone and solely the *the* owner thereof and interested therein, with this exception, that one Daniel L. Wells, who is and has been in the employ of this defendant as a partial manager and overseer in and about the work on said railroad under said contracts, is by contract with this defendant to receive from this defendant, as compensation for the services of said Wells, a certain percentage of the profits on the work done under said contracts, and there is no understanding or agreement expressed or implied, direct or indirect, secret or open, by which the said Kilbourn, Kneeland, and Ludington, or either of them, shall ever have or receive any benefit of said judgment or indebtedness, or any share therein, or in the proceeds thereof, when collected or realized, at any time or in any manner whatsoever.

And this defendant, further answering, says that as to the matters and things set up in said bill of complaint in regard to the alleged transfer of certain real estate therein mentioned by said corporation to Chas. D. Nash, this defendant is an entire stranger, and he has no knowledge or information in regard thereto other than that contained in the complainant's bill, and he leaves the complainant to his proofs in that regard. And this defendant, further answering, says that at the time he was notified by the officers and directors of said corporation of their inability to provide means for the completion and performance on their part of the conditions of said construction contracts, he had a large force of men and horses employed on said railroad, and a large amount of tools, implements, carts, and wagons; he had employed some twelve hundred men and three hundred horses, and a large majority of them were to become and did become idle, and he has been compelled to make large and ruinous sacrifices in the sale of his horses, and has had left upon his hands a very large amount of property which he must either sacrifice or allow the same to remain entirely unproductive until the work under said construction contracts may be resumed; he had also to forego for an indefinite

time the profits of his contracts. These facts and considerations, as well as others, important to be taken into view in estimating the damage by him to be sustained, induced this defendant to demand from said corporation a reasonable compensatory sum therefor, and the sum named in the agreement, set forth as "Schedule B," was finally, and after much negotiation and controversy, agreed on as a
255 compromise. This defendant demanded a much larger sum, to which he believed himself entitled; and he still insists it ought to have been awarded to him. That upon the principles which he is informed prevailed upon the trial of the suit of the complainant against the said corporation for an alleged breach of a like contract, though vastly inferior in extent, this defendant verily believes he would have been lawfully and justly entitled to the sum of at least three hundred and fifty thousand dollars; and defendant further says that, at the time said sum was agreed on, it was also verbally agreed that he should receive in part payment of such damages two hundred thousand dollars of the second mortgage bonds of said corporation, at the rate of fifty cents upon the dollar; and shortly after the first October he did receive said bonds, and there now remains due to him of said sum thus agreed upon for his damages but the sum of one hundred thousand dollars. And this defendant, further answering as to his dealings with the said railroad company, says that some time in or about the month of February last, he made application in writing to said corporation, through its board of directors, for one hundred and fifty thousand dollars of the bonds of said corporation known as the ten millions issue, to be applied as a payment to this defendant on the final settlement of accounts when said railroad should be completed to La Crosse, said bonds to be issued on certain conditions in said application named; a true copy of such application is hereto annexed, and marked "Schedule H." That such request or application was acted upon by the board of directors, and bonds were issued to the nominal or par value of one hundred and twenty-nine thousand dollars, and twelve hundred and ninety shares of privilege stock, so called, was issued, as follows: March 19, sixty-five first mortgage land-grant bonds at eighty cents, and six hundred and fifty shares of said stock, five per cent. paid; and April second, sixty-four of like bonds, and six hundred and forty shares of like stock, all of which were received by this defendant at the rate of eighty cents on the dollar for said bonds, making, inclusive of said stock, the sum of one hundred and nine thousand six hundred and fifty dollars to be accounted for by this defendant upon the completion of his said construction contract and the final settlement of accounts between him and said company. And this defendant, further answering, says that he holds, nor has he in his possession or under his control any note, bill, bond, mortgage, or security, or any property or valuable thing whatsoever belonging to said corporation, or in which it has any interest other than what is hereinafter declared and set forth. And this defendant, further answering, says that, upon the completion by him of said railroad, or the work, labor, and materials to be done and furnished by him as contemplated in the contracts and agree-

ments therefor hereinbefore recited to New Lisbon aforesaid, the said railroad company will he indebted to this defendant, in addition to the indebtedness hereinbefore stated, for the value of that portion of the work remaining undone on the first day of October as
256 aforesaid, and which was then estimated as aforesaid at the the sum of fifty-six thousand five hundred dollars. That all and singular the premises are true; wherefore this defendant prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

SELAH CHAMBERLAIN.
EMMONS & VAN DYKE,
Solicitors and of Counsel.

DISTRICT OF WISCONSIN, *ss:*

Selah Chamberlain being duly sworn, says that he has read the foregoing answer by him subscribed, and that he knows the contents thereof, and that the same is true of his own knowledge, except as to the matters and things therein stated to be upon his information and belief, and, as to such matters, he has been informed and veriiy believes it to true.

SELAH CHAMBERLAIN.

Sworn to before me, Nov. 24, 1857.

J. M. MILLER, *Clerk.*

257 *Exhibit No. 3.*

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the district court of the United States of America for the district of Wisconsin begun and held according to law at the city of Milwaukee, in said district of Wisconsin, on the first Monday, being the third day of January, A. D. 1859; present, the honorable Andrew G. Miller, judge of said court, presiding.

On the twenty-first day of the said term, to wit, on the eleventh day of February, A. D. 1859, the following proceedings were had, to wit:

NEWCOMB CLEVELAND
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Company, Byron Kilbourn, Moses Kneeland, James Ludington, D. C. Freeman, and Selah Chamberlain. } In equity.

This day came the parties, by their counsel, and on due consideration of the pleadings, proofs, and arguments of counsel, it is thereupon ordered, adjudged, and decreed by the court, that the article of agreement between the La Crosse and Milwaukee Railroad Company and Selah Chamberlain, bearing date the twenty-sixth day of September, eighteen hundred and fifty-seven, whereby said company sold and assigned to said Chamberlain all its personal property except such as is used on the Milwaukee and Watertown division of said railroad, and leased to said Chamberlain their said railroad and

appurtenances, rights, franchises, and privileges, be, and hereby is, vacated, annulled, and made void, so that the same shall not hereafter be of any force or effect whatever.

And that the said Selah Chamberlain be, and hereby is, perpetually enjoined and restrained from using, managing, running, controlling, or meddling with said railroad, or the rolling stock, personal property, or any of its appurtenances or franchises, or anything connected therewith, under or by virtue of said article of agreement.

And it is further ordered, adjudged, and decreed by the court, that the judgment of the said Selah Chamberlain against the La Crosse and Milwaukee Railroad Company entered in this court on
258 the second day of October, eighteen hundred and fifty-seven, for the sum of six hundred and twenty-nine thousand and eighty-nine dollars and seventy-two cents, and all executions and proceedings thereon, be and hereby are vacated, annulled, made void, and set aside, so that the same shall have no further effect whatever.

And it is further ordered, adjudged, and decreed by the court, that the said defendant, Selah Chamberlain, pay the costs to be taxed, so far as they accrued in this proceeding against him; and that he pay the same within twenty days, or in default thereof, an execution be issued against him for the same.

And as the lease and assignment of the said company to D. C. Freeman has expired by its own limitation, it is further ordered, adjudged, and decreed by the court, that the defendant, D. C. Freeman, pay the costs to be taxed, so far as they accrued in this proceeding against him, within twenty days, or in default thereof, an execution be issued against him for the same.

And it is further ordered, adjudged, and decreed by the court, that the La Crosse and Milwaukee Railroad Company pay the costs to be taxed, so far as they accrued in this proceeding against it, within twenty days, or in default thereof, an execution be issued against it for the same.

And it is further ordered, that reference be, and hereby is, made to a master of this court to ascertain and report the annual income of the several lots described in the bill as having been conveyed to Moses Kneeland and James Ludington, from the time of their said purchase, together with a statement of the interest thereon. And also to ascertain and report the amount of the actual cost of permanant improvements made on said lots by said Kneeland and Ludington, together with interest thereon; and also the amount of liens and taxes on said lots that have been paid by said Kneeland and Ludington, or by C. D. Nash for them, together with interest on the same; and that this bill be retained for further decree and proceedings after the coming in of said report.

It is ordered by the court that, in case of appeal by the La Crosse and Milwaukee Railroad Company and Selah Chamberlain, or either of them, a bond to authorize a supersedeas shall be given, and filed with sufficient sureties, to be approved by the court or judge, in the penal sum of one hundred and fifty thousand dollars.

A. G. MILLER.

259 UNITED STATES OF AMERICA, *for the district of New York, ss:*

We, James G. Jenkins and George F. Betts, the commissioners named in the annexed commission, do hereby certify, in return thereto, that we summoned before us Russell Sage, the witness named therein, and having first, in the presence of both of us, carefully cautioned and sworn the said Russell Sage to testify the truth, the whole truth, and nothing but the truth in answer to the interrogatories and cross-interrogatories about to be propounded to him, we did, at the city of New York, on the 20th, 21st, and 23d days of January, 1865, carefully read over to the said Russell Sage the said interrogatories and cross-interrogatories to the said commission annexed, and that the answers and statements of the said witness were reduced to writing, in the presence of the witness and of both the commissioners, by one of the said commissioners, and after carefully reading the same to the witness he subscribed the same in the presence of both the commissioners; that said answers and statements are contained in the papers hereto annexed, and are signed on each sheet by both of said commissioners.

And we further certify that we have made diligent inquiry for Nehemiah P. Stanton, the other witness named in said commission, and have ascertained that he is now absent from the city of New York, and is probably in the State of Arkansas, and that the time of his return to the city of New York is uncertain.

We further certify that we have retained the annexed deposition for the purpose of sealing the same and depositing it in the post office, addressed to the clerk of the court for which the same was taken.

In witness whereof, we have hereunto set our hands and seals this twenty-third day of January, in the year one thousand eight hundred and sixty-five, and of the independence of the United States the eighty-ninth.

JAS. G. JENKINS,
GEO. F. BETTS,
Commissioners.

Commissioners' fees	$40 70
Marshal's fees	2 00
	42 70

260 UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

[L. S.] The President of the United States of America to James G. Jenkins and George F. Betts, esqs., greeting:

Know ye, that in confidence of your prudence and fidelity you have been appointed, and by these presents you, or any one or more of you, are invested with full power and authority to examine Russell Sage and Nehemiah P. Stanton on their corporal oaths, as witnesses

in a cause depending in the circuit court of the United States for the district of Wisconsin, wherein Frederick P. James, Abram M. Brewer, E. Bradford Greenleaf, and others, are complainants, and The Milwaukee and Minnesota Railroad Company and others are defendants, on the part of the defendants, upon the interrogatories annexed to this commission; and therefore you are hereby commanded that you, or any one or more of you, at certain days and places to be appointed by you for that purpose, do cause the said Russell Sage and Nehemiah P. Stanton to come before you, and then and there examine them on oath upon the said interrogatories, and that you take such examination and reduce the same into writing, and return the same annexed to this writ, closed up under your seal, or the seals of any one or more of you, into the said circuit court of the United States, before the judge thereof, with all convenient speed.

Witness, the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at the city of Milwaukee, in said district, this thirtieth day of December, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the United States the eighty-ninth.

A. SCOTT SLOAN, *Clerk.*

261. *Rules.*

On the receipt of the commission made out as aforesaid, by any one of the commissioners named, he shall give notice to the other commissioners named therein of the time and place of taking the deposition, if possible, and if any of the commissioners are absent at the execution of said commission, any one or more present may proceed to execute the same, (unless otherwise expressly directed therein,) as if all were present; but they must certify that those absent have been duly served with notice of the time and place of executing said commission, or the reasons for their not being so notified.

The persons to whom such commissions shall be directed, or any one or more of them, unless otherwise expressly directed therein, shall execute the same, as follows:

First. They, or any of them, shall publicly administer an oath to the witnesses named in the commission, that the answers given by such witnesses to the interrogatories proposed to them shall be the truth, the whole truth, and nothing but the truth.

Second. They shall cause the examination of each witness to be reduced to writing, and to be subscribed by him, and certified by such of the commissioners as are present at the taking of the same.

Third. If any exhibits are produced and proved before them, they shall be annexed to the depositions to which they relate, and shall, in like manner, be subscribed by the witness proving the same. (This section must be understood to refer to such papers as can be produced upon the examination.) If the paper referred to be a record not subject to the control of the party or the commissioners, it will be sufficient to annex a copy, and the original may be produced on the trial, separate from the commission.

Fourth. The commissioner or commissioners shall subscribe each sheet of the depositions, and annex all the depositions and exhibits to the commissions, upon which the return shall be indorsed, and shall close them up under their or his seals, and shall address the same, when so closed, to the clerk of the court from which the commission issued, at his place of residence, with the style of the suit.

Fifth. If there is or is not a direction on the commission to return the same by mail, they orhe shall immediately deposit the packet so directed to the nearest post office.

Sixth. If there be a direction on the commission to return the same by an agent of the party who sued out the same, the packet so directed shall be delivered to said agent.

262 Circuit court of the United States for the ninth circuit and district of Wisconsin, in equity.

FREDERICK P. JAMES and OTHERS
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company and others.

On motion of Matt. H. Carpenter, solicitor for the Milwaukee and Minnesota Railroad Company, one of the defendants in this cause, it is ordered that a commission issue out of and under the seal of this court, to be directed to James G. Jenkins, esq., commissioner to take the testimony of Russell Sage, Nehemiah P. Stanton, and William Barnes, on written interrogatories.

Dated December 19, 1864.

MATT. H. CARPENTER,
Sol. for the Milwaukee and Minnesota Railroad Company, Def't.

In circuit court of the United States for the 9th circuit and district of Wisconsin, in equity.

FREDERICK P. JAMES and OTHERS
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company.

Interrogatories to be administered to Russell Sage, a witness to be produced, sworn, and examined on the part of the Milwaukee and Minnesota Railroad Company, one of the defendants in this cause, before , commissioner.

1st interrogatory. Are you the same Russell Sage whose testimony was taken, ex parte, in this cause on behalf of the complainants in this cause, before John A. Osborn, esq., commissioner, on or about the 21st day of August, A. D. 1864?

2d interrogatory. In your deposition taken before said Osborn, commissioner as aforesaid, you say you know Edwin C. Litchfield; state where the said Litchfield resides, and what is his occupation or profession.

3d interrogatory. In said deposition you say: "The said Litch-

field, on or about the 3d day of May, A. D. 1859, assigned to me a certain judgment recovered by him in the district court of the
263 United States for the district of Wisconsin, on or about the 5th day of October, A. D. 1858." State what, if anything, you paid therefor, and whether you paid therefor in money. If so, how much, and whether in coin or bills; and if in anything but money, state what and how much; and state when, where, and to whom you paid the same; and if you state that you paid for the same in bonds known as the third mortgage bonds of the La Crosse and Milwaukee Railroad Company, state how many of said bonds, and of what denominations and numbers; to whom, when, and where you paid or delivered them. State from whom you received them, and for what purpose you received them; and how much and what you paid for the bonds which you so paid to said Litchfield.

4th interrogatory. If, in answer to the preceding interrogatory, you say you paid for said judgment in third mortgage bonds, give the numbers of the bonds you paid, and state particularly whether or not the said bonds constituted a part of those one hundred and sixty-five thousand dollars in bonds which you received in trust, as you stated in your said deposition; and state particularly the date and place at which you made the payment, as near as you can.

5th interrogatory. State whether you did not, in presence of Alexander Fleming and Albert C. Gunnison, and others, at the Everett House, in the city of New York, in or about the month of June, A. D. 1860, on question being asked by some person present, state that you had purchased said Litchfield judgment for the benefit of the Milwaukee and Minnesota Railroad Company, or words to that effect.

6th interrogatory. In your said deposition you say that you have a copy of the assignment of the said judgment, which you say you produced before the commissioner to be attached, and which is marked Exhibit A, to your said deposition; state when, where, and by whom that pretended copy was made; state in whose handwriting it is; state for what purpose it was made; state whether you have ever compared it with the original; state whether you know, of your own knowledge, that it is an exact and literal copy of the original, and how you know it to be so, (if you answer that you do know it to be so;) and state when and where, and in whose presence, you last saw the original assignment; and state when, where, and to what extent, you have searched for it.

7th interrogatory. Did you not know at the time your depo-
264 sition was taken where the original assignment was, or where it could be found?

8th interrogatory. In your said deposition you state, "I subsequently sold said judgment to F. P. James & Company;" state now when and where you made such sale to James & Co., and whether you have received payment for said judgment; if so, when, where, from whom, in what, and to what amount? and state whether there is any, and what, agreement between you and the said James & Co., and whether you are not now interested therein, or in the collection thereof, and

whether the said judgment was not assigned to said James & Co. for the purpose of being made the foundation of this suit.

9th interrogatory. Did you not make the said assignment of the said judgment to said James & Co. because you thought and were advised that it would not look well for you to make an attack upon the organization of a corporation which you were principally instrumental in organizing, and of which you were the first president?

10th interrogatory. Have you received payment from James & Co. for the assignment of said judgment to them? If so, when, where, from whom, in what, and to what amount did you receive the same?

11th interrogatory. What was the agreement of F. P. James & Co., in consideration of which you assigned said judgment to them? Was it oral or in writing? If in writing, where is the original? and will you produce it to the commissioner, and have it examined by the commissioner, attached to your testimony?

12th interrogatory, Have you fully answered the last preceding interrogatory. and furnished said agreement to said commissioner? If not, why not?

13th interrogatory. Were one hundred and sixty-five thousand dollars in amount of the bonds secured by the Barnes mortgage delivered to you by the La Crosse and Milwaukee Railroad Company, in trust for paying certain of its debts? If yea, state when, where, and by what officer of said company the same were delivered to you, the numbers and denominations of said bonds so delivered, and whether the
265 trust upon which you so received the same was expressed in writing. If yea, can you and will you present the said original to this commissioner, that the same or copy thereof, to be examined by said commissioner, may be attached hereto as a part of your testimony? And state when, where, and to whom, and in what amounts you parted with said bonds respectively, giving the numbers of the bonds which were parted with by you for different purposes respectively, and state fully how all the said bonds were disposed of by you, and how many and what bonds you did not dispose of under the trust, and what was done with them by you.

13½ interrogatory. In your said deposition you say you were present at the *pretended* sale by Barnes; why do you say "pretended sale?" Was not the property actually sold by Barnes?

14th interrogatory. In your said deposition you say that "Said Barnes seemed excited, and was apprehensive that other injunctions would be served upon him, and the sale was hurried through;" state here and now *how* the sale was hurried through; state how you know Barnes seemed excited; what did he do or say that indicated excitement or apprehension on his part?

15th interrogatory. In your said deposition you say "After the sale a demand was made by a bondholder upon Barnes for the proportion of money which he (bondholder) supposed had been realized upon the sale; that Barnes declined to pay him, and hurriedly left the State of Wisconsin," &c. &c.; state here and now who made this demand upon Barnes; when and where was it made? Were you present when it was made? Did the pretended bondholder exhibit any bond or

bonds to Barnes at the time of said demand? Who was present at saip demand, and what do you mean by saying that Barnes hurriedly left the State? Did he leave before completing his business, or did he leave secretly and by any unusual or extraordinary means of conveyance? State how he left the State, whether on the usual train of cars from Milwaukee, or how otherwise, and whether he employed any and what means of concealment?

16th interrogatory. Previous to the sale by Barnes were you not interested in bonds secured by the Barnes mortgage? and were you not in Milwaukee advising with him about said foreclosure? and after
266 said sale did you not advise with said Barnes about the organization of the Milwaukee and Minnesota Railroad Company, founded upon the validity of the foreclosure of that mortgage by Barnes.

16½ interrogatory. Did said Barnes do, or omit to do, anything, and if so, what, against your advice? Did you not counsel or acquiesce in everything done by said Barnes as to that foreclosure?

17th interrogatory. Did you not have principal management and control of the organization, the Milwaukee and Minnesota Railroad Company, subsequent for its organization, for more than two years?

18th interrogatory. Did you not execute the deed of organization for and on behalf of the holders of a large amount of said bonds?

19th interrogatory. Did you not sign the said deed as representing 80,000 dollars of said bonds in your own right?

20th interrogatory. Did you not sign said deed for and on behalf of one Cowan as the owner of 24,000 dollars of said bonds, and for and on behalf of one Battershall for 50,000 dollars of said bonds, and for and on behalf of one Pardon for 20,000 dollars of said bonds, and for and on behalf of one Buel, the owner of 18,000 dollars of said bonds, for and on behalf of one Gilbert, the owner of 50,000 dollars of said bonds, for and on behalf of one Kennedy, as the owner of 75,000 dollars of said bonds, for and on behalf of one Noxon, as the owner of 17,000 dollars of said bonds, for and on behalf of one Gray, the owner of 20,000 dollars of said bonds, for and on behalf of one Lovett, as the owner of 50,000 dollars of said bonds, and for and on behalf of one Alden, as the owner of 30,000 dollars of said bonds, for and on behalf of one Gould, as the owner of 50,000 dollars of said bonds, for and on behalf of one Frost, as the owner of 3,000 dollars of said bonds, for and on behalf of one Watson, as the owner of 56,500 dollars of said bonds, for and on behalf of one King, as the owner of 40,000 dollars of said bonds, for and on behalf of one Templeton, as the owner of 5,000 dollars of said bonds, for and on behalf of one Foster, as the owner of 20,000 dollars of said bonds, for and on behalf of one
267 Fleming, as the owner of 20,000 dollars of said bonds, and for and on behalf of one McLean, as the owner of 20,000 dollars of said bonds?

21st interrogatory. Did you yourself and Alexander Mitchell dictate in the drafting of the deed of organization the names of the first directors of the Milwaukee and Minnesota Railroad Company? and did

not said directors, by your request, elect you the first president of said company?

22d interrogatory. Did you not hold the office of president of said Milwaukee and Minnesota Railroad Company past the time for holding two annual elections, without calling a meeting of stockholders for election of officers?

23d interrogatory. When Alexander Fleming, a stockholder of said Milwaukee and Minnesota Railroad Company, obtained from the circuit court of Milwaukee county an order for holding an election of directors by the stockholders of said company, did you not direct the attorney of said company to appeal to the supreme court from said order, and thereby prevent an election as provided for by said order, holding over yourself in the meantime as president of said company?

24th interrogatory. Was you aware immediately after the said foreclosure sale was had, and at the time of the organization of the Milwaukee and Minnesota Railroad Company, and during all the time you were holding the office of president of said company, that said Barnes had hurriedly left the State of Wisconsin, as stated by you in your deposition? and if you answer yea, state whether, through all those years, you regarded the manner in which Barnes conducted said sale and left said State as casting any taint or illegality upon the foreclosure by said Barnes and the subsequent organization of the Milwaukee and Minnesota Railroad Company founded thereon? and if you did so regard it, state how you, as an honorable man, could represent such an organization, as its president; and if you answer that at that time you did so regard it, answer what has since opened your eyes to its enormity?

25th interrogatory. When, where, and in whose presence did Alfred Noxon state to you that the 75,000 dollars of bonds mentioned
268 by you in your deposition were part of the Chamberlain lot of bonds?

26th interrogatory. Are you now president of the Milwaukee and St. Paul Railway Company? and are you not directly interested in opposition to the interests of the Milwaukee and Minnesota Railroad Company?

27th interrogatory. Are you not interested in a railroad between Milwaukee and Watertown and thence to Portage, and is not the same a rival and competing road to the eastern division of the La Crosse and Milwaukee railroad?

28th interrogatory. Is there not a considerable degree of ill feeling between yourself and the officers and agents of the Milwaukee and Minnesota Railroad Company? and have not the officers of said company repeatedly charged you in printed circulars with having committed perjury? and has not Alexander Fleming, or some other person, caused to be printed and circulated among your acquaintances and others in parallel columns two affidavits made by you at different times, upon the same subject, of different and opposite purport? and have not all these things very much embittered your mind against the officers and agents of the Milwaukee and Minnesota Railroad Company? and are you not very much prejudiced against said company?

29th interrogatory. Prior to the said sale by Barnes, did not Newcomb Cleveland commence a suit against said Barnes and others to restrain the said sale, and did you make in said cause, on behalf of said Barnes, or on whose behalf, an affidavit substantially as follows, viz:

NEWCOMB CLEVELAND
vs.
THE LA CROSSE AND MILWAUKEE R. R. Co. and others.

STATE OF NEW YORK, *City and county of Albany, ss:*

Russell Sage, being duly sworn, says that he is one of the defendants in this cause, and that he is a resident of the State of New York; that he is not informed, save by the said complaint, and does not believe, that the mortgage or deed of trust to William Barnes, and commonly called the third mortgage upon the La Crosse and Milwaukee railroad, including the supplement thereto, was made or accepted without the design, intention, or expectation of selling, using, or disposing of the bonds thereunder issued for a reasonable price, or for less than the value thereof, or without the design or intention to pay the same, or the interest thereon.

But this defendant is informed and believes that the said third mortgage was executed and accepted for the purpose and with the design of paying off, at the par value of the bonds to be issued thereunder, the bona fide floating debt honestly due by the said railroad company, and about to accrue; and that about one-half of the amount of the bonds issued under the said mortgage have been duly so used; that he is not informed, save by the said complaint, and does not believe, that the said mortgage was executed or accepted with the design or intention, or for the purpose of foreclosing the same as soon as the first interest coupons should become due, but is informed and believes that the same was executed and accepted with the bona fide intention and expectation that the said railroad company would be able to pay the interest to accrue thereon, and that the officers of the said railroad company did endeavor to make arrangements for the payment of such interest.

And this defendant is informed, and believes, that of the two millions of dollars of bonds issued under the said mortgage, five hundred and fifty thousand dollars have been issued to Stoddard Judd, as a trustee, to indemnify, or partially indemnify, the stockholders of said railroad company, commonly called farm-mortgage stockholders, for the breach by the said railroad company of its agreements with those stockholders; that about five hundred and twenty thousand dollars were sold to raise money for paying the indebtedness of the said company, and that the balance were paid to bona fide creditors of the said company in payment of their debts, some at rates above par, some at rates below par, and most at par—averaging at about par; and this defendant is informed and believes that the amount of floating debt paid and extinguished by the said two millions of dollars of bonds is far greater than any value which the said two millions of

dollars of bonds had ever had, or are likely to have, with the present previous debts of and liens on the property of the said railroad company; and this defendant is not informed, save by the said complaint, and does not believe, that five hundred thousand dollars of said bonds, or any such amount, are held by the present directors of the said railroad company, or by others for them, or that the said directors parcelled or dealt out the said bonds in large or any amounts to their friends or favorites at nominal considerations, or otherwise than is hereinbefore stated; and this defendant says that he received eighty thousand dollars of said bonds in payment of a judgment received by him in the circuit court of Milwaukee county, Wisconsin, upon a bona fide indebtedness of the said company, held and owned by him, and on which that amount was then due; and this defendant says that he has never been an officer of said railroad company, nor ever interested therein, save as a creditor; that he never countenanced or advised any sacrifice of said bonds, or any of them, for any other use than the payment of the floating debts at or near par.

(Signed) RUSSELL SAGE.

Subscribed and sworn to before me this 10th day of May, 1859.
Witness my hand and seal officially, at city of Albany.

[SEAL.] R. J. HILTON, *Commissioner for Wisconsin, at City of Albany, N. Y.*

269 30th interrogatory. If in answer to the last preceding interrogatory you answer that you did make such affidavit, or an affidavit in substance like that, then state here and now whether said affidavit was and is true; and if you say the same was not and is not true, specify in detail what parts thereof were and are false.

31st interrogatory. Did you not, as late as the 27th day of May, A. D. 1862, verify by your oath a complaint in the cause The Milwaukee and Minnesota Railroad Company against William Gould and others, in the circuit court for Milwaukee county, an action commenced by How & McGregor, as attorneys for the said company, an extract of which complaint is as follows:

"And the plaintiff further shows to the court that, by virtue of the said foreclosure of said deed of trust or mortgages to said Barnes, as hereinbefore set forth, and the organization of said Milwaukee and Minnesota Railroad Company, and conveyance by said Barnes, as hereinbefore set forth, that the said Milwaukee and Minnesota Railroad Co. became, under and by the laws of the State of Wisconsin, the successor of the La Crosse and Milwaukee Railroad Company, as to all the property and things described in said deeds, and the owner of and clothed with all the rights, privileges, franchises, and property, real and personal, and things in action, and effects of every nature and description before then belonging to said La Crosse and Milwaukee Railroad Company, wherever situated and however circumstanced, subject only to such valid and legal liens and incumbrances thereon as were prior to said first deed to said Barnes; and that the said Milwaukee and Minnesota Railroad Company, being by law an incorporated company, composed of the creditors of the said La Crosse

and Milwaukee Railroad Company, and purchasers at said foreclosure sale, (in the manner hereinbefore stated,) as corporators, has a legal right to object, to resist, and set aside any and all conveyances, negotiations, sales, transfers, leases, mortgages, or judgments, which were or have been made or suffered by said La Crosse and Milwaukee Railroad Company, with intent to hinder, delay, or defraud its creditors, and has the right to object, to resist, and set aside every illegal, unjust, or fraudulent claim of any person or persons against the said La Crosse and Milwaukee Railroad Company, which is apparently a lien or incumbrance upon any of the property, rights, privileges, franchises, or other things whatsoever of said last-named company, which were embraced or described, or intended to be embraced or described, in either of said trust deeds to said Barnes, and now owned by said Milwaukee and Minnesota Railroad Company, as hereinbefore stated"—Or words to that effect, or in substance like that?

Last interrogatory. Do you know any other matter or thing that may or can be of benefit or advantage to either or any of the parties to this suit? If yea, set the same forth fully and at large.

MATT. H. CARPENTER,
Sol'r for the Milwaukee and Minnesota Railroad Company, Def't.

270 In circuit court of the United States for the ninth circuit and district of Wisconsin, in equity.

FREDERICK P. JAMES and OTHERS
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company and others.

Interrogatories to be administered to Nehemiah P. Stanton, witness to be produced, sworn, and examined on the part of the Milwaukee and Minnesota Railroad Company, one of the defendants in this cause, before , commissioner.

1st interrogatory. Are you the same Nehemiah P. Stanton whose testimony was taken ex parte on behalf of the complainants in this cause before George F. Betts, commissioner, on or about the 29 day of August, A. D. 1864?

2d interrogatory. In your said deposition you say you were president of the La Crosse and Milwaukee Railroad Company from April, 1858, until the sale by Barnes under the mortgage to him. State here, and now, whether during that time you were acquainted with the business affairs and financial condition of said company.

3d interrogatory. In your said deposition you say "I know of the La Crosse railroad executing a mortgage to Barnes, as trustee, to secure two millions of bonds." State here, and now, whether said mortgage was executed by the La Crosse and Milwaukee Railroad Company to said Barnes, and whether the same was issued to secure bonds of said company to the amount of 2,000,000 of dollars, and whether that is what you mean by saying "the La Crosse road executed a mortgage to Barnes, trustee, to secure 2,000,000 of bonds."

4th interrogatory. Were you president of said company all the

time from April, 1858, until the sale by Barnes under said mortgage to him?

5th interrogatory. If in answer to any preceding interrogatory you shall say that you were president of said company all the
271 time from April, 1858, to the date of said sale by said Barnes, and that during that time you were acquainted with the condition of said company, state here, and now, fully the financial condition of said company during all that time, and state whether or not the issuance of said mortgage to said Barnes was necessary to secure the interests of said company; and if you say that it was, state here and now fully the circumstances which made it necessary.

6th interrogatory. State whether or not said mortgage to said Barnes, and the bonds secured thereby were issued by said company for the purpose or with the intention of having the same foreclosed, or for what other or different intention the same was issued by said company.

7th interrogatory. Do you remember whether or not at a certain meeting of the board of directors of said company at Albany, New York, about the 15th of June, 1858, or some other time, a certain resolution was passed substituting William Barnes as trustee, in place of one Gould, and directing the bonds to be issued under said Barnes mortgages to be issued so that interest would become due thereon on the 1st day of January, A. D. 1859, instead of the 1st day of July, 1859? If yea, state here, and now, fully why such change in said bonds was directed, and whether the same was in pursuance of any and what fraudulent purpose and design of said company, or its officers and directors, and state whether said change was then believed by said directors to be beneficial or injurious to said company.

8th interrogatory. Did said company afterwards, and when, execute to said Barnes a mortgage or trust deed supplementary to the mortgage first executed by said company to said Barnes?

9th interrogatory. State whether or not the said company executed said mortgage and supplemental mortgage to said Barnes, or the bonds thereby secured, with the fraudulent purpose or intention to hinder, delay, or defraud the creditors or stockholders of said company, or whether the same were issued bona fide for the purpose of securing and paying the creditors of said company, or for what other or different purpose did the said company issue the said mortgages or the bonds secured thereby.

272 10th interrogatory. In your said deposition, speaking of the bonds *speaking of the bonds* secured by said Barnes mortgages, you say "The whole amount were issued by the co. in various ways; I mean by issued, signed, sealed, and passed out of the hands of the co." . State here, and now, whether said company parted with and disposed of all of said bonds prior to May, A. D. 1859, or whether any of said bonds at that date, and how many, had not been parted with and disposed of by said company on the 21st day of May, A. D. 1859.

11th interrogatory. In your deposition, speaking of a note for $20,000 given by said company to Chamberlain, you say "there were put up as collateral to this note 400,000 dollars of the so-called third

mortgage bonds; that note was paid shortly after maturity." State here and now whether said note was ever paid by said company, or whether the same was ever paid otherwise than with the avails of a sale of said bonds by Meigs & Greenleaf for Chamberlain, as stated in your deposition.

12th interrogatory. About what time did the board of directors of said company learn the fact that said 400,000 dollars of said bonds had been sold by Meigs & Greenleaf to pay the said Chamberlain note.

13th interrogatory. Did said La Crosse and Milwaukee Railroad Company, after the sale of said bonds by said Meigs & Greenleaf, and previous to said sale by said Barnes, take any and what steps or proceedings to redeem or reclaim said bonds, and did said company give any and what notice to the public that said sale of said bonds by said Meigs & Greenleaf had been irregular or in any way improper?

14th interrogatory. Has the said La Crosse and Milwaukee Railroad Company ever taken any steps or proceedings to recover or reclaim said bonds sold by said Meigs & Greenleaf, or has said company ever tendered or paid to said Chamberlain, any part of said note, otherwise than by the avails of said bonds sold by said Meigs & Greenleaf for said Chamberlain?

15th interrogatory. Has said La Crosse and Milwaukee
273 Railroad Company ever tendered to any of said persons who bought any of said four hundred thousand dollars of said bonds the amounts paid by them respectively therefor, or any sum whatever to either of them?

16th interrogatory. State, if you know, whether or not the said third mortgage bonds so called, have circulated, been bought and sold, and passed from hand to hand like other similar securities.

17th interrogatory. At the time the said note for 20,000 dollars matured, had the company the money, or had you or any other, and what officer or director of the said company, in your or his possession, belonging to said company, moneys sufficient to pay said note, or any and what part thereof? And state whether or not when said note matured the said company had any assets upon which money could be raised to pay said note; and if yea, why was said note not paid?

18th interrogatory. Was there to your knowledge any understanding whatever between said company, yourself, or any other officer or manager of said company with said Chamberlain, or with said Meigs & Greenleaf, or any other and what person or persons, prior to said sale of said bonds by Meigs & Greenleaf, that the said note should not be paid, or that said bonds should not be divided up between any of the officers or agents, directors, or managers of said company, or either of them, or their friends, or any and what other person or persons? If yea, set forth said understanding fully, and state by and between whom it was made.

19th interrogatory. Were you present at a meeting of the board of directors of said company on or about the first day of June, A. D. 1858? If yea, state whether or not said board of directors, at that meeting, passed a certain preamble and resolution authorizing the

issue of two million dollars of bonds. And if yea, whether the said resolution and preamble were as follows, viz:

"Whereas a large floating debt has accumulated for rolling stock and materials furnished and provided and labor performed for the La Crosse and Milwaukee Railroad Company, which remains unpaid and is unsecured by any mortgage or other security upon the road or other property of said company; and whereas a large number of persons along the line of the road in Wisconsin have mortgaged their farms to the company to aid in the construction, which farm mortgages have been used by the company with the stipulation on its part to pay the interest accruing thereon, and a failure to pay which interest would produce great distress among the farm mortgage stockholders; and whereas, it is necessary that immediate provision be made for paying off such floating debt of the company, and for the payment of the accrued and accruing interest on such farm mortgages and the other just indebtedness of the company, and also to provide for taking up and cancelling said farm mortgages when deemed expedient: Therefore—

"*Resolved*, That an issue of bonds of the said company be, and is hereby, authorized to the amount of two million dollars ($2,000,000,) to be secured by a mortgage upon the entire line of the road from Milwaukee to La Crosse, including all depot grounds, lots, buildings, stations, materials, line, track, improvements of every kind, all rolling stock, cars, locomotives, and all real and personal property appertaining to the said line of railroad, said bonds to be in sums following: one thousand (1,000) bonds in sums of five hundred dollars each, and fifteen hundred (1,500) bonds in sums of one thousand dollars each, payable in thirty years from date, bearing interest at the rate of seven per cent. per annum from the first day of July, 1858, payable semi-annually after one year at the Albany Exchange Bank, in the city of Albany, the first payment of interest to be made on the first day of July, 1859, said bonds to be printed in the usual form with coupons, and the mortgage securing the same to be executed by the president and secretary of said company to William Gould, of the city of Albany, trustee for said bondholders, and providing, in case of death, resignation, or removal of said trustee for the appointment of a successor, on application to one of the justices of the supreme court of the State of New York; also a sinking fund to be provided for the gradual payment of said bonds, viz: the sum of twenty-five thousand dollars ($25,000,) annually, the first payment to be made on the first day of July, 1861. Said trustee shall, for the payment of the sinking fund, advertise for the purchase of said bonds by ten days' notice in New York, Albany, and Milwaukee newspapers, said mortgage so to be executed subject to nine hundred and twenty-two thousand dollars ($922,000,) in outstanding bonds, secured by a first mortgage upon the eastern division, also to Milwaukee city bonds ($314,000,) also one million dollars ($1,000,000) in second mortgage eastern division, and $4,000,000 mortgage upon the line of railroad from Portage City to La Crosse, (and subject to the second mortgage on the road from Portage City to La Crosse,) and from junction near

the village of Tomah to the terminus on lake or river St.
276 Croix"—If not, set the same forth as it was passed.

20th interrogatory. Were you present at a meeting of the board of directors of said company on or about the 15th day of June, A. D. 1858? If yea, did said board pass two resolutions, one amending a former resolution, and a second directing John H. Ronalds to prepare a draft of said bonds and mortgage? If yea, were the said resolutions as follows, viz:

"*Resolved*, That the resolutions adopted on the first day of June instant, at the office of the company in the city of Milwaukee, authorizing and directing the issue of bonds of the said company to the amount of $2,000,000, secured by a mortgage, and the same is hereby amended as follows: said bonds to be in the sums following, viz., $1,000,000 in sums of $1,000 each; $700,000 in sums of $500 each; $300,000 in sums of $100.

"And that said resolution be further amended by striking out the words 'payable semi-annually after one year,' and also the words 'the first payment of interest to be made on the 1st day of July, 1859,' so that the coupons shall be due and payable semi-annually from the first day of July, 1858;" which resolution was adopted unanimously.

"*Resolved*, That John H. Reynolds, esq., counsellor at law, be, and he is hereby, requested to prepare said bond and mortgage and submit the same to the board of directors for their approbation, previous to the execution of the same" ?—

If not, set forth the said resolutions as they were passed.

21st interrogatory. If in answer to the last preceding interrogatory you answer that such or similar resolutions were passed, state here and now the reason why said resolution was passed directing said bonds to be so issued that interest should become due January 1st, A. D. 1859; and state whether the said directors, when the same was passed, believed such change would be for the benefit or to the prejudice of said company; and if you answer that they believed it would be beneficial to the company, state why, how, and in what manner it was believed that such change would be beneficial; and if you answer that they believed such change would be prejudicial to said company, state why such change was directed.

22d interrogatory. You say in your said deposition that you, as president of said company, borrowed certain sums of money of Watson, Gould, Forster, and Gilbert; was said money borrowed by you individually, or by the La Crosse and Milwaukee Railroad Company acting through you, its president?

277 23d interrogatory. At or before the time said company made such loan, (if you say it was made by the company,) was there any agreement or understanding between said company or yourself or any other officer or agent or director of said company and the said Gould, Watson, Foster, and Gilbert, or either of them, that the said sums of money borrowed from them, respectively, should not be repaid, so that they or either of them should keep, divide, or dispose of said bonds in any and what particular way?

24th interrogatory. At the time said loans were made from said Watson, Foster, Gilbert, and Gould, or at the time said notes were given to them respectively, or at the time said third mortgage bonds were pledged to them respectively, as stated in your deposition, was there any understanding or agreement between said company, yourself, or any other officer or director of said company, and the said Watson, Gould, and Gilbert, and Foster, or either of them, that said notes or either of them would not be paid, or that said bonds pledged as aforesaid would not be redeemed by said company? If so, set forth said understanding or agreement fully and at large, and state by and between what persons it was made or existed.

25th interrogatory, At the time said loans were made from said Watson, Foster, Gould, and Gilbert, were the same necessarily or unnecessarily made? and if you answer that they were necessarily made, state here and now fully the circumstances and condition of said company, which rendered the same necessary; and if you say they were unnecessarily made, state why they were made.

26th interrogatory. For whose benefit was the money borrowed from said Watson, Foster, Gould, and Gilbert, used? and state whether any and what part of it was converted by you to your own use, or whether any part of it was converted to the individual use of any other officer, agent, or manager of said company.

27th interrogatory. State whether said company has ever repaid to Watson, Gould, Gilbert, or Foster any part of the sums of money borrowed from them respectively, otherwise than by the avails of
278 the said bonds deposited as collateral security for said sums borrowed, respectively.

28th interrogatory. At what time, as near as you can state, did the board of directors of said company learn that said Watson, Gould, Gilbert, and Foster had disposed of the bonds pledged to them respectively, as collateral security as aforesaid.

29th interrogatory. Did said company ever at any time take any and what steps or proceedings to reclaim said bonds disposed of by said Gould, Gilbert, Watson, and Foster, or either of them? and state whether said company ever published any and what notice to the world or to persons dealing in said third mortgage bonds that the said Gould, Watson, Foster, or Gilbert had improperly disposed of the bonds or any part of them pledged to said Gould, Watson, Foster, or Gilbert, respectively.

30th interrogatory. Did said company ever offer or tender to any of the persons who purchased any of said bonds from said Gould, Watson, Foster, and Gilbert, or either of them, the amounts respectively which they had paid for said bonds?

31st interrogatory. At the time said notes to said Gould, Watson, Foster, and Gilbert matured, had the said company any means, or had its officers in their possession, belonging to said company, any means with which to pay said notes or any or either of them? If yea, state whether said company paid any of said notes, and which and how many of said notes the said company paid; and if it did not pay all, why did it not?

32d interrogatory. Were you in Milwaukee at the time of the sale made by Barnes before mentioned, on the 21st of May, A. D. 1859? If yea, did you see the said Barnes at Milwaukee at that time? If yea, state whether you know anything of the circumstances of his leaving Milwaukee; if yea, state whether said Barnes left said Milwaukee secretly or hurriedly, or how otherwise.

33d interrogatory. Did the said La Crosse and Milwaukee Railroad Company ever redeem the promises sold by said Barnes under said mortgages? If yea, state when, where, and the circumstances thereof.

279 34th interrogatory. Had you when you were in Milwaukee in December, 1858, any, and what, sum of money in your possession or under your immediate control, and belonging to the La Crosse and Milwaukee Railroad Company, in addition to the amount borrowed by you from said Gould, Watson, Foster, and Gilbert?

35th interrogatory. Were you present at a meeting of a board of directors of said company at Albany, New York, on or about the 13th of December, 1858? If yea, did said board of directors at that time pass a preamble and resolutions as follows, viz:

"Whereas this board has received information from Milwaukee that a very large amount of its most valuable property in the city of Milwaukee, including its machine shops, engine-houses, repair shops, the costs of which to this date, including the improvements thereon, more than $150,000, are in imminent peril of being lost to this company in consequence of the non-payment of the sum of $10,000 and interest, being balance due on contract for the purchase-money for said premises, and proceedings having already been commenced for the purpose of ejecting the company from the possession of said premises;

"And whereas the company are entirely destitute of means whereby to save from a total loss said machine shops, round-houses, and premises, if proceedings already commenced shall not be discontinued by the payment of said sum, and believing that any means within our power to protect and preserve the said property to the company is the duty of the board to resort to and adopt, inasmuch as the said premises are vital and indispensable to the working of said road;

"And whereas there have already been sales during the present month of some of the real estate belonging to the company in the city of Milwaukee indispensable to the working of the road, which may yet be redeemed and saved for the company;

"And whereas this board have not until recent date been aware that the property of the company was in the peril we now find it, having relied upon the statements and information obtained from the former officers of the company, and no record on the books of the company having exhibited the present condition of affairs;

"And whereas the arrangement contemplated with Selah
280 Chamberlain, by which he was to furnish such sums of money as may be necessary to protect the property of the company from sale, or otherwise for defraying the necessary expenses and sala-

ries incident to our organization, &c., &c., has failed, on account of Mr. Chamberlain's declining to carry out such plan: Therefore—

"*Resolved*, That the president of this company be, and he is hereby, directed to borrow or loan a sum of money not exceeding $15,000, to be used for the purposes above recited, and to sell, pledge, hypothecate any bonds or securities belonging to the company for the purpose of raising said amount upon the best terms he may be able to obtain the same.

"*Resolved*, That the president be requested, as soon as the funds above required are obtained, forthwith to proceed to Milwaukee and to pay such claims and incumbrances against the said company as are indispensable to save the real estate and improvements thereon, and to prevent the sacrifice which will otherwise be made, and also that the said president be requested to ascertain and obtain reliable information as to any or all unpaid claims for right of way, or for any real estate which has been purchased by deed or appraisal for the use and benefit of said company; also to ascertain the location and value of such real estate incumbered as above stated, and to report upon the above as fully as practicable at a meeting of the board of directors to be held in the city of Albany, on the 5th day of January next"?—And if not, state whether any preamble and resolutions in substance like these were passed at such meeting of said board.

36th interrogatory. If, in answer to the last preceding interrogatory, you answer that the preamble and resolutions therein mentioned, or similar ones, were passed, state here and now, whether the recitals contained therein were believed to be true by the said directors present in said meeting when the same were passed: and state whether you acted under said resolutions in borrowing said sums of money from Gould, Gilbert, Watson, and Foster.

37th interrogatory. Were you present at a meeting of a board of directors held at the office of said company in the city of New York, on the 17th day of December, 1858? and if yea, did Selah Chamberlain notify said board of directors that the said $20,000 note hereinbefore mentioned, against said company, was due, and that he required the funds? and if yea, were the following proceedings had by said board upon said notice? viz:

"On motion, a committee of three, consisting of G. W. Luther, William Platt, and A. C. Gunnison, were appointed with full power to settle the same if possible.

"The president submitted the following notice received from Messrs. Meigs & Greenleaf.

"On motion, the committee on funding the floating debt were requested to settle the same, as the president was about to leave for Wisconsin, and would be absent at the time mentioned, to wit, the 25th instant.

" 'OFFICE OF MEIGS & GREENLEAF,
" '*No.* 50 *Exchange Place, December* 18, 1858.
" 'NEW YORK, *December* 18, 1858.

" 'N. P. Stanton, esq., president La Crosse and Mil. R. R. Co., New York:

" 'DEAR SIR—You will please take notice that we hold the note of your company, dated August 6, '58, at four months, for $20,000 and interest, and due 9th instant, with $400,000 3d mortgage bonds as collateral, and that if said note is not paid on or before the 25th instant, we shall proceed to sell the securities pledged for payment of said note.

" 'Yours truly,

" 'MEIGS & GREENLEAF.' "

And if not, what proceedings were had thereon?

281 38th interrogatory. Do you remember that you had received the notice from Meigs & Greenleaf mentioned in the last preceding interrogatory? and did you lay the same before said meeting of said board?

39th interrogatory. Were you present at a meeting of a board of directors of said company at Milwaukee on the 14th day of February, A. D. 1859? If yea, state whether a quorum of said board attended; and whether or not said board at said meeting approved the said proceedings of the said meeting of the said board held on the 13th day of December, 1858, at Albany, in the State of New York, and the meeting of said board held at New York on the 17th day of December, 1858, hereinbefore mentioned?

Last interrogatory. Do you know any other matter or thing which may or can be of benefit or advantage to either or any of the parties to this suit? If yea, set the same forth fully and at large.

MATT. H. CARPENTER,
Solicitor for the Mil. & Min. R. R. Co., Def't.

282 Circuit court of the United States in and for the district of Wisconsin.

FREDERIC P. JAMES and OTHERS
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And now come the complainants, by Finches, Lynde & Miller, their solicitors, and name as commissioner to take the deposition of Russell Sage and Nehemiah P. Stanton, George F. Betts, and to take the deposition of William Barnes, Robert J. Holton, esq., of Albany, New York.

And said complainants, by their said connsel, object to the interrogatories addressed to the witness Russell Sage, numbered 3, 4, 5, 8, 9, 10, 11, 12, 13, 16½, 16, 17, 18, 19, 20, 21, 22, 23, 24, 28, 29, 30, 31, as calling for testimony that is irrelevant, immaterial, and incompetent, and as inquiring about matters and things in no way

responsive to any matters of fact inquired of said Sage by said complainants.

And said complainants particularly object to the 28th direct interrogatory, for the reason that it calls for the contents of papers not produced or shown to the said witness; that the fact that the officers of the Milwaukee and Minnesota Railroad Company had charged said Sage with perjury, is no evidence that said Sage had committed perjury; that said charges, if true, could not bind said complainants, and said testimony is hearsay; and because said Alexander Fleming, if he did cause to be printed and circulated affidavits of the character described, could not thereby render the actions of the directors of the La Crosse and Milwaukee Railroad Company any more fraudulent or void, as against creditors and said complainants, than if he had not circulated said affidavits; and because said affidavits are not produced and shown to the witness, and proved to have been circulated by Alexander Fleming, and because said testimony is not competent to impeach the witness.

And said complainant objects to the 29th interrogatory for
283 the reason that said interrogatory does not produce to said witness the original affidavit, nor does it name the time or place of the making of the said affidavit, nor call the attention of the witness to the special circumstances it involves, and because it seeks to prove facts purely collateral to the matters and facts testified to by said witness. And said complainants object specially to the 31st interrogatory, that the original affidavit is not produced or exhibited to the witness, and because the testimony is collateral to any matter or thing in issue in this cause, and because the opinion of said Sage cannot bind said complainants.

And said complainants, not waiving their said objections and not consenting or in any way acquiescing in the appointment of the commissioner named by said complainants, but protesting against the same, propound to said Russel Sage the following cross-interrogatories:

First cross-interrogatory. State how and in what manner you first came to be the owner and holder of any of the bonds secured by the so-called third mortgage. Who solicited you to take such bonds? and state the representations, if any, which were made to you, and by whom, and how, and in what way you paid for said bonds. Please state fully.

Second cross-interrogatory. If you shall answer the 28th direct interrogatory by saying that you did make affidavit, please state whether at that time you had any knowledge, or information, or belief that said third mortgage (so called) was executed fraudulently or for a fraudulent purpose; and state upon whose statements you relied for your opinion that the same was bona fide, and what statements were made to you and by whom. Give the names of all the parties.

Third cross-interrogatory. State whether or not you afterward discovered that there had been fraud in the execution of the mortgage or the disposition of the bonds secured by the mortgage. If yea, state facts you discovered; when, where, from whom. State the

means by which and the manner in which you discovered the same.
Give a full, minute, and particular statement of all that you
284 learned and discovered, the names of the parties, and everything that was said by them.

Fourth cross-interrogatory. State where William Barnes went after said sale, what change if any was made in his room at his hotel, whether or not said Barnes was kept closeted and concealed at any place or for any length of time, and where after said sale, and how long, and how and when, he left. Give details fully and minutely.

Fifth cross-interrogatory. If you answer the 24th interrogatory by saying that you did know after the said foreclosure sale was had that said Barnes had hurriedly left the State, state also whether, at the same time named in said direct interrogatory, you knew that one Albert C. Gunnison had obtained a large number of the so-called third mortgage bonds and taken the same in the name of one Battershall, and whether at the same time you knew of the shameful and fraudulent acts of William A. Guest, A. C. Gunnison, and one Platt, in selling or allowing to be sold the $400,000 of bonds put up as collateral to a $20,000 note to Selah Chamberlain, and state whether you at the same time knew of the agreement made by said Platt and one Aaron S. Bright in relation to the obtaining of said bonds or some of them; and state whether or not you then knew the manner in which said third mortgage bonds put up as collateral were disposed of, and to whom, and state when, where and from whom you first learned the facts in relation to the disposition of said bonds; and state all that you know or have heard said by any officer or director of the La Crosse and Milwaukee Railroad Company or of the Milwaukee and Minnesota Railroad Company in relation to the disposition of said bonds. State fully and particularly.

Sixth cross-interrogatory. Who have been, since you first learned the true facts about the so-called third mortgage and the bonds secured by it, the leading and active parties in the so-called Milwaukee and Minnesota Railroad Company? State whether or not you have had, since discovering the true facts about the execution of said third mortgage and the disposition of its bonds, much of anything to do with the organization called the Milwaukee and Minnesota Railroad Company.

Seventh cross-interrogatory. Do you know a lawyer in Milwaukee
by the name of Matthew Hall Carpenter or Matt. H. Carpen-
285 ter? and is he the same one whose name is subscribed at the foot of these direct interrogatories as Matt. H. Carpenter, solicitor for the Milwaukee and Minnesota Railroad Company? If yea, was said Matt. H. Carpenter engaged in any way or manner in attaching or threatening to attach the said third mortgage or the sale under it, or the so-called Milwaukee and Minnesota Railroad Company? State whether or not you have frequently heard the said Carpenter declare that the organization of the said Milwaukee and Minnesota Railroad was invalid or fraudulant? If yea, when and where?

Eighth cross-interrogatory. From whom did you first learn that

the organization of the said Milwaukee and Minnesota Railroad Company was invalid, worthless, or fraudulent?

Ninth cross-interrogatory. If you shall state that you first learned the fact from Matt. H. Carpenter, please state when and where and under what circumstances said Carpenter so stated it. State what suit or suits he was then threatening to bring, and on whose behalf, against said Milwaukee and Minnesota Railroad Company, and what said Carpenter said about said organization? Give a full and detailed history of everything said and done, to your knowledge, by said Carpenter against the said Milwaukee and Minnesota Railroad Company.

Tenth cross-interrogatory. If in answering the 30th interrogatory you shall state that you did make the affidavit referred to, please state whether the facts alleged upon information and belief were furnished you by any party or parties connected with the La Crosse and Milwaukee Railroad Company, and state whether, at the date of said affidavit, you had any knowledge, intimation, or suspicion that said bonds had been used by the directors or officers of said company in any other than a bona fide manner. State whether you learned that said directors or some of them did hold said bonds or some of them. If yea, state when, where, and from whom you first learned the fact that said bonds or any of them were really owned by the directors or some of said directors of the La Crosse and Milwaukee Railroad Company. State fully.

Lastly. Can you state any other matter or thing of benefit or advantage to be known? If yea, state the same fully and at large in your answer to this interrogatory.

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FINCHES, LYNDE & MILLER,
Solicitor for Def'ts.

Circuit court of the United States in and for the district of Wisconsin.

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Interrogatories to be propounded to the witness Nehemiah P. Stanton, by the complainants.

First cross-interrogatory. State whether or not you, as an officer or director of the La Crosse and Milwaukee Railroad Company, ever voted for any resolution authorizing the payment of what were known and called the "Barstow bonds" and the "corruption bonds." If yea, state whether the resolution referred to in the 19th direct interrogatory contemplated the payment of any of the said bonds, or were said bonds or any of them included in the "floating debt" of the said company, or "other just indebtedness" of said company.

Second cross-interrogatory. If you shall answer the 19th direct interrogatory by saying that the board of directors of the said company did pass a preamble and resolution of the character set forth in said interrogatory, state the amount of the so-called "floating debt" and

the "just indebtedness" which said issue of bonds was intended to pay, and state how much and what portion of the said "floating indebtedness" or "just indebtedness" was made up of the said "Barstow bonds" or "corruption bonds."

Third cross-interrogatory. How and in what manner and for what purpose were the said "Barstow bonds" and "corruption bonds" issued, and to what amount? State whether you or any officer or director of the La Crosse and Milwaukee Railroad Company ever had in your or their possession or under your or their control any of the said "Barstow bonds" or "corruption bonds," and did you or they receive in lieu of said "Barstow bonds" or "corruption
287 bonds," any of the said third mortgage bonds. If yea, give the name of the officer or officers and the amount.

Fourth cross-interrogatory. If you shall say in answer to the 16th direct interrogatory, that you know that said third mortgage bonds so called, had circulated, been bought, sold, and passed from hand to hand like other similar securities, please state whether said bonds ever were offered on 'change or at any public board of brokers, or in any of the usual and public places of sale of such securities in New York city. If yea, state the place or places and by whom. Were not said bonds in disrepute? Could buyers be readily obtained from them? How do you know they circulated and were bought and sold like other similar securities? State the name or names of the party or parties who purchased them, and the price paid therefor; give the name of each purchaser, the amount purchased, when and where purchased, and the price paid, so far as you know or remember the same; and state the same fully and particularly.

Fifth cross-interrogatory. Have you answered the last cross-interrogatory to the best and utmost of your knowledge, information, recollection and belief, without any mental reservation, and stated minutely all that you know about the circulation, sale, transfer, or passing from hand to hand of said so-called third mortgage bonds? If nay, state the same fully and particularly in answer to this interrogatory.

Sixth cross-interrogatory. Was there at any time, and when, a market value to said third mortgage bonds? If yea, what was the value of the same? What is the highest price in cash you have known paid for said third mortgage bonds? Who paid it, and when, and how many was purchased at the price?

Seventh cross-interrogatory. What is the lowest price in cash you have known paid for the said so-called third mortgage bonds? When, where, and by whom paid?

Eighth cross-interrogatory. If you answer the 32d direct interrogatory by saying that you was in Milwaukee at the time of the said sale made by said Barnes, state for what purpose you was in Mil-
waukee at that time; state whether you was at the court-
288 house at the time of sale, and state whether or not said Barnes read his notice of sale in a hurried manner, and how long he cried the property, and where he went after said sale, and how long he remained after said sale in Milwaukee, and where he left, and where

he was from the time of said sale until he left, and whether or not he kept himself concealed from the public during the time he remained in Milwaukee after the sale. Did you see him, and where, and when, and how often in Milwaukee after said sale, prior to his leaving?

Ninth cross-interrogatory. Did you, as an officer of the La Crosse and Milwaukee Railroad Company, or in any capacity, advise or consult with one Matt. H. Carpenter, of Milwaukee, as to the validity of the said sale of said Barnes? What steps did you take under his advice about said sale? What advice did he give you about said sale?

Tenth cross-interrogatory. Do you know the fact that said Carpenter at any time claimed said sale to be fraudulent and void? If yea, state when, where, and to whom, and under what circumstances he claimed said sale to be fraudulent and void.

Eleventh cross-interrogatory. Did not said Matt. H. Carpenter file complaints and bring suit to enjoin the sale? and have you not heard the said Matt. H. Carpenter say that said sale was fraudulent and void? State where and when.

Twelfth cross-interrogatory. State what efforts, if any, were made by the La Crosse and Milwaukee Railroad Company, or the officers of that company, to stop the sale under the Barnes mortgage. What was done by said company, or said directors, about said sale?

Thirteenth cross-interrogatory. State whether or not any, and what, proportion of farm mortgage indebtedness of the said La Crosse and Milwaukee Railroad Company was paid by said third mortgage bonds.

Fourteenth cross-interrogatory. What amount was realized to said La Crosse and Milwaukee Railroad Company, or about what amount, from the entire issue of said bonds secured by said Barnes mortgage? State fully.

Fifteenth cross-interrogatory. Have you ever had, or owned, or held, either for yourself or your friends, or has any one had,
289 owned, or held for you, or your benefit, any of the said third mortgage bonds?

Sixteenth cross-interrogatory. How many of said third mortgage bonds were actually sold to bona fide purchasers, and paid for in cash, to your knowledge? State whether or not you have ever known of a bona fide sale of any of said bonds to any party for cash. If yea, give the name of the purchaser or purchasers, when purchased, and the price paid. State the same in detail as fully and particularly as you can.

Seventeenth cross-interrogatory. Have you answered the last cross-interrogatory as fully as you can, according to your best knowledge, remembrance, and belief? If nay, make such addition or explanation as you may desire in answer to this interrogatory.

Eighteenth cross-interrogatory. State what particular necessity (more than there had been) existed for the making of the third mortgage at the time the same was made. Was it not a fact of which you were cognizant, that at the date of the said mortgage the credit of the said La Crosse Railroad Company was in bad repute? Did you

not then know, and did you not believe, that said third mortgage bonds could not find a sale in the market at anything like par?

Nineteenth cross-interrogatory. Did you not know that the second mortgage bonds of said company had sold at a greatly depreciated price in the market but a short time previous? Was it not the fact that the second mortgage bonds of said company had been sold at only about 50 cents on the dollar?

Twentieth cross-interrogatory. State what effort you made, and what efforts were made by the directors of said company to sell said bonds; and what was the demand for said bonds.

Twenty-first cross-interrogatory. Who of the officers of said railroad company were most efficient in selling or attempting to sell said bonds? How many of said bonds were sold at private sale by
290 the officers of said company?

Twenty-second cross-interrogatory. When it was found that said bonds could not be sold except at a great discount, why did said company or said officers still continue to press the sale of said bonds at such sacrifice? Why did they not stop the sale?

Twenty-third cross-interrogatory. What steps did you, as an officer of that company, take to prevent a sacrifice of the said bonds? State all that you did, and what efforts you made.

Twenty-fourth cross-interrogatory. Have you ever at any time, and when, been an owner of, or in any way or manner whatsoever been directly or indirectly interested in the stock of the so-called Milwaukee and Minnesota Railroad Company? If yea, state when and to what extent.

Lastly. Do you know of any other matter or thing of benefit to the parties? If yea, state the same fully.

FINCHES, LYNDE & MILLER,
Sol'r for Complainants.

Circuit court of the United States in and for the district of Wisconsin.

FREDERICK P. JAMES *et als.*
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company *et al.*

Cross-interrogatories to be propounded to the witness William Barnes, under and by virtue of the annexed commission to be issued to Robert J. Hilton and James G. Jenkins, or such other commissioner as may be named by the complainants.

290*a* First cross-interrogatory. Have you any knowledge, information, or belief as to how or in what manner the bonds to secure the payment of which the mortgage or deed of trust and supplemental mortgage mentioned in the said second interrogatory were disposed of, or to whom?

Second cross-interrogatory. Did you ever at any time, and if yea, when, have or hold, either directly or indirectly, any interest of any kind in said third mortgage bonds? If yea, state the nature, character, or kind of interest you had, and the extent of that interest.

Third cross-interrogatory. Do you know of your own knowledge any-

thing about the truth of the facts stated or recited in the preamble set out in the 9th interrogatory? Did you make many inquiries about the truth or falsity of the facts set out in said preamble?

Fourth cross-interrogatory. If you answer the 11th interrogatory that you did foreclose the said mortgage inquired about in said interrogatory, please state how and in what manner you foreclosed the same; whether you met with any opposition, and from whom; whether injunctions were issued, and at whose suit, and what became of said injunctions. And state whether one Matthew H. Carpenter, a lawyer of the city of Milwaukee, State of Wisconsin, was one of the most active and energetic opponents that you encountered to said foreclosure.

290*b* Fifth cross-interrogatory. If in answer to the last cross-interrogatory, you shall say that one Townsend commenced a suit to enjoin said sale, state whether said Townsend's suit was settled or agreed to be settled; and state whether or not, in consideration of such settlement or agreement to settle, said Townsend discontinued his said suit. If you should not have mentioned in your answer to the preceding interrogatory the name of said Townsend, then state whether said Townsend did commence a suit, and whether said suit was settled or agreed to be settled.

Sixth cross-interrogatory. Did you make out affidavits of said sale? If yea, what did you do with said affidavits?

Seventh cross-interrogatory. Was you not somewhat excited on the day of the sale? Was you not afraid that injunctions or some other process from the court might be issued against you enjoining the sale? and did you not, in the most hurried and rapid manner, read the notice of sale and putting up the property? How long was you in reading the notice of sale and crying the property?

Eighth cross-interrogatory. Who bid in the property? How and in what manner was the bid paid, and by whom? Did said bid more than pay the full amount advertised to be due on the mortgage? If yea, how and in what manner was said surplus paid? How much money was paid on said bid?

Ninth cross-interrogatory. Where did you go after you made said sale? Where did you keep yourself from the time you made
290*c* said sale until you left the city of Milwaukee? Did you keep your apartments locked, and keep youself excluded the greater part of said time? Did you change your room at the hotel? Where and when were the papers that you executed after the sale drawn up, and by whom? Where did you sign them? Was the room you were in locked at the time you signed said papers? Had not said papers been drawn up in advance, and were they not all ready to be signed as soon as the sale was made?

Tenth cross-interrogatory. Was not the signing and transferring of papers done secretly and with locked doors for the express purpose of avoiding the service of injunction or other process upon you?

Eleventh cross-interrogatory. Had all the holders of the bonds secured by the mortgage to you assented to the bidding in of the property by you, and paying therefor in the said bonds? If nay,

what amount of outstanding so-called third mortgage bonds were there at the date of said sale, which did not assent to said property being sold and paid for in said third mortgage bonds?

Twelfth cross-interrogatory. Prior to your leaving Milwau-
290*d* kee and after said sale, had any person, and who, as a third mortgage bondholder, made a demand upon you for the pro rata amount due upon his bond, or for the amount of his bond?

Thirteenth cross-interrogatory. What time of day did you leave Milwaukee? What was the occasion or reason for your leaving at the time you did leave? Did you borrow any and what amount of money to leave at the time you did leave? How long before starting had you formed the purpose to start?

Fourteenth cross-interrogatory. Had you any fear that any party would bring a suit against you? Had you not been threatened with suits? Have you ever, and when, been to Milwaukee since you hurriedly left that city?

Fifteenth cross-interrogatory. Did you as trustee or otherwise ever advise or consult with Albert C. Gunnison, Stephen H. Alden, N. P. Stanton, or any officer or director of the La Crosse and Milwaukee Railroad Company, about said sale, or the foreclosure of said mortgage? or did you at any time hear said parties, or any officer or director of said company, express any disapprobation of the said foreclosure?

Sixteenth cross-interrogatory. Did you know at the time of the sale under the mortgage to you that any of the directors of the
290*e* La Crosse and Milwaukee Railroad Company were invested in said mortgage bonds? If yea, what directors? Give their names.

Seventeenth cross-interrogatory. Do you now know the fact that said directors of said company, or some of them, did, at the time of said sale, have an interest in so-called third mortgage bonds? If yea, state how you know that fact, and give the name or names of the directors.

Eighteenth cross-interrogatory. Was you advised by any party to settle with Townsend, or did you advise any party to settle with him?

Nineteenth cross-interrogatory. What amount did you receive, as trustee and for your time and services in and about the foreclosure of the said mortgage, and how was the same paid?

290*f* Twentieth cross-interrogatory. Can you state any other matter or fact which may be of benefit or advantage to the parties in this suit? If yea, set forth the same fully and at large in your answer to this interrogatory.

FINCHES, LYNDE & MILLER,
Sol. for Complainants.

290*g* Thirteenth cross-interrogatory. What time of day did you leave Milwaukee? What was the occasion or reason of your leaving at the time you did leave? Did you borrow any and what amount of money to leave at the time you did leave? How long before starting had you formed the purpose to start?

Fourteenth cross-interrogatory. Had you any fear that any party would bring a suit against you? Had you not been threatened with suits? Have you ever, and when, been to Milwaukee since you hurriedly left that city?

Fifteenth cross-interrogatory. Did you, as trustee or otherwise, ever advise or consult with Albert C. Gunnison, Stephen H. Alden, N. P. Stanton, or any officer or director of the La Crosse and Milwaukee Railroad Company about said sale, or the foreclosure of said mortgage, or did you ever at any time hear said parties or any officer or director of said company express any disapprobation of the said foreclosure?

Sixteenth cross-interrogatory. Did you know at the time of the sale under the mortgage to you that any of the directors of the La Crosse and Milwaukee Railroad Company were interested in said third mortgage bonds? If yea, what directors? Give their names.

Seventeenth cross-interrogatory. Do you know the fact that said directors of said company, or some of them, did, at the time of
290*h* said sale, have an interest in said so-called third mortgage bonds? If yea, state how you know the fact, and give name or names of the directors.

Eighteenth cross-interrogatory. Was you advised by any party to settle with Townsend, or did you advise any party to settle with him?

Nineteenth cross-interrogatory. What amount did you receive, as trustee and for your time and services in and about the foreclosure of the said mortgage, and how was the same paid?

Twentieth cross-interrogatory. Can you state any other matter or fact which may be a benefit or advantage to the parties in this suit? If yea, set forth the same fully and at large in your answer to this interrogatory.

FINCHES, LYNDE & MILLER,
Sol'rs for Complainants.

290*i* Circuit court of the United States for the 9th circuit and district of Wisconsin, in equity.

FREDERICK P. JAMES and OTHERS
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company and others.

Here in court comes the Milwaukee and Minnesota Railroad Company, one of the defendants in this cause, by Matt. H. Carpenter, its solicitor, and objects to each and every of the pretended cross-interrogatories filed and sewed by said complainants, to be propounded to Russell Sage, for the reason—

1. That the interrogatories filed and sewed by this defendant to be propounded to said Russell Sage are cross-interrogatories, and that the interrogatories now filed by said complainants as aforesaid, are cumulative to the ex parte deposition of the said Sage, heretofore taken and filed in said cause by said complainants in this cause.

2. That each and every of said interrogatories so filed and sewed

by said complainants calls for testimony not material or relevant to any issue in this cause, and incompetent and in its nature hearsay.

3. That each and every of said interrogatories filed by said complainants assumes as facts matters not admitted by the plead-

290*k* ings in this cause nor proven therein; and—

4. Because each and every of said interrogatories so filed by said complainants calls for testimony to impeach and stultify said Sage, who is the complainants' witness in this cause.

MATT. H. CARPENTER,
Mil. and Minn. R. R. Co.

And the said Milwaukee and Minnesota Railroad Company, one of the defendants in said cause, by its said solicitor, and objects to each and every of the x-interrogatories filed and sewed by the said complainants to be propounded to Nehemiah P. Stanton, for the same reasons assigned in its objections to the several interrogatories filed and sewed by said complainants to be propounded to the said Russell Sage.

MATT. H. CARPENTER,
The Mil. and Minn. R. R. Co.

290*l* Deposition of Russell Sage, a witness produced, sworn, and examined before the undersigned, James G. Jenkins and George F. Betts, commissioners in pursuance of the annexed commission, at the office of George F. Betts, in the city of New York, on the 20th day of January, 1865, at 11 a. m.

The said Russell Sage, being first duly sworn by the undersigned that the answers given by him to the interrogatories and cross-interrogatories propounded to him should be the truth, the whole truth, and nothing but the truth, did depose and say—

291 The circuit court of the United States for the ninth circuit and district of Wisconsin, in equity.

FREDERICK P. JAMES and OTHERS
vs.
THE MILWAUKEE AND MINNESOTA R. R. Co. and others.

To the first interrogatory he saith: I am.

To the second direct interrogatory he saith: The said Edwin C. Litchfield resides in the city of Brooklyn, New York: he is a lawyer by profession, but is not at present engaged in any practice. He is in no regular business at present. I think he is, and has been for a year past, travelling in Europe.

292 To the third direct interrogatory he saith: I paid Mr. Edwin C. Litchfield for the judgment mentioned in the third direct interrogatory, in bonds known as the third mortgage bonds of the La Crosse and Milwaukee Railroad Company; I gave him twenty-five (25) bonds of one thousand dollars each; the bonds was numbered somewhere from No. 261 to No. 326, between those two numbers; I have

a list somewhere of the precise number of the bonds; I have looked for it among my papers last night, but could not find it; I will look for it again, and will, if I can find it, produce it to the commissioners to be annexed to my deposition; I also agreed to pay the costs of Mr. Litchfield's attorneys in Milwaukee, which was subsequently paid, and amounted to seven hundred dollars; I delivered the bonds to Mr. Litchfield at his office in William street, New York, in December, 1859; I received the bonds from the La Crosse and Milwaukee Railroad Company; they were paid to me by the railroad company in part payment of a judgment which I had against the company; it was the only judgment I ever obtained against the company, and was recorded in some court in Milwaukee by Judge Hubbell, as my attorney—I think in the circuit court, but cannot remember the date or the amount; I think the amount of my judgment was about $75,000, besides interest; I took these bonds at their face towards the satisfaction of my judgment.

To the fourth direct interrogatory he saith: I have answered this interrogatory as nearly as I can in my answer to the third direct interrogatory, except that I answer in addition, that the bonds I paid to Litchfield were not a part of the one hundred and sixty-five bonds I received in trust as stated by me in my former deposition in this cause.

293 To the fifth direct interrogatory he saith: I have no recollection of stating any such thing, nor do I believe I made any such statement, for the reason that there was not any organization known as the Milwaukee and Minnesota Railroad Company on the third of May, 1859, which is the date of my purchase of the said judgment from Litchfield.

To the sixth direct interrogatory he saith: I believe the copy of the assignment referred to in the sixth direct interrogatory, and which was annexed to my deposition, is in the handwriting of M. H. Glasford of this city; he was at the time a clerk to Mr. N. A. Cowdray; I think the copy was made in Mr. Cowdray's office in New York, but I cannot state when it was made; I think it was made in 1862 or 1863. I had the copy made because I did not want to part with the original; I compared the copy with the original at the time it was made, and know of my own knowledge that it is an exact and literal copy, because I compared it with the original; the last time I saw the original assignment it was in my office at Troy, I believe, and it was in my possession; I am unable to state the time, and the last time I saw the assignment; it may have been in my office in this city, instead of Troy; I made a thorough search among the papers in my office in New York for it, in August, 1864, and have searched for it once since among my papers that have since come down to me from my office in Troy; I have searched for it everywhere I thought it likely to have been placed.

294 To the seventh direct interrogatory he saith: I did not.

To the eighth direct interrogatory he saith: I sold the Litchfield judgment to F. P. James & Co., at the city of New York in 1862 or 1863, I cannot tell now particularly as to the time; I have received

payment for such judgment, at or near the time of sale, from F. P. James & Co., at New York; I received the face of the judgment and interest in the stock of the Milwaukee and St. Paul Railway Company at par; I cannot state the amount in figures, nor the date of the payment, except that I believe it was in 1862 or 1863; I think the amount was about $35,000; there was and is no agreement of any kind between me and F. P. James & Co. in respect to that judgment; I am not now interested therein, or in collection thereof; the judgment was not assigned by me for the purpose of being the foundation of this suit.

To the ninth direct interrogatory he saith: I did not make the assignment of the judgment because I thought, or was advised, that it would not look well for me to make an attack upon the organization of a corporation which I was principally instrumental in organizing, and of which I was the first president.

To the tenth direct interrogatory he saith: I did receive payment from F. P. James & Co. for the Litchfield judgment in stock of the Milwaukee and Saint Paul Railway Company to the amount, at the time and place, as stated by me in my answer to the eighth direct interrogatory.

To the eleventh direct interrogatory he saith: The agreement for the assignment of the Litchfield judgment to F. P. James & Co. was an oral agreement. The agreement was to assign the judg-
295 ment to them for the amount due thereon, and to receive in payment the stock of the Milwaukee and St. Paul Railway Company at its par value. There was no written agreement.

To the twelfth direct interrogatory he saith: I have fully answered the eleventh direct interrogatory. I have not furnished a written agreement to the commissioner, because there was no such written agreement. The assignment of the judgment was in writing, and was produced before the commissioner in my former deposition last summer, and a copy was annexed to my deposition at that time.

To the thirteenth direct interrogatory he saith: One hundred and sixty-five thousand dollars in amount of the funds secured by the Barnes mortgage were delivered to me in trust for paying certain debts of the La Crosse and Milwaukee Railroad Company, by Nehemiah P. Stanton, then president of said company; they were delivered to me at Albany in the winter of 1859; they were numbered from one to two hundred, both inclusive, for five hundred dollars each, amounting to $100,000.

Numbers 501 to 900, both inclusive, for one hundred dollars each, amounting to $40,000.

Numbers 351 to 400, both inclusive, for five hundred dollars each, amounting to $25,000.

I never had any written articles of trust from Stanton or the company; the trusts upon which I received them were expressed in resolutions adopted by the La Crosse and Milwaukee Railroad Company, and recorded in their book of records, which I saw in part, but I had no copy of them; the resolutions were subsequently modified by the company, but part of the resolutions I did not see until some time after

the sale of the road under the Barnes mortgage; I received from Mr. Stanton, at the time I received the bonds, a written memoran-
296 dum which is in Mr Stanton's handwriting, and which I here produce to the commissioner, a copy of which, compared by the commissioner, is annexed to this deposition and marked "Exhibit A;" I received no other written paper in regard to the trust that I remember of, except I may have received copies of the resolutions, or some of them, declaring the trust, from a clerk in the office of the company, but not verified by the officers. I disposed of these bonds as follows:

I paid the United States Insurance Company of Milwaukee in 1859, at Milwaukee, $9,400. I paid Messrs Butler, Buttric & Cotrill, of Milwaukee, in 1859, at Milwaukee, for two judgments against the company, $3,600. I paid Thomas H. Canfield, of Burlington, Vt., in Troy, in 1859, by resolution of La Crosse Railroad Company of March 8, 1859, $15,000. I paid Wm. A. Guest, of New York, in 1859, as per resolution of the board of April 9, 1859, $10,000. I paid L. W. Weeks, of Milwaukee, now of New York, at Milwaukee, in 1859, $500. I paid N. J. Emmons, of Milwaukee, at Milwaukee, in 1859, $1,000. I paid Charles H. Wheeler, of Milwaukee, at Milwaukee, in 1859, $400. I paid John S. Rockwell, of Wisconsin, at Milwaukee, in 1859, I think the amount was $1,300. I paid at different times in 1859, and to different parties, whose names I cannot remember, to pay expenses and services in negotiating various claims, debts, and important matters under the trust, $20,000.

The balance, $103,800, was returned to the board of directors of the Milwaukee and Minnesota Railroad Company, with a statement of the disbursements of the bonds, which was transcribed upon the records of the company, after a reference to a committee of said company; the bonds returned by me were then cancelled in my presence; the numbers of the bonds disposed of by me were of the bonds I received, but I cannot specify the particular numbers of the bonds I gave to each person, nor the numbers of them returned.

At this point the further examination of the witness, Russell Sage, was postponed to Saturday, January 21st, 1865, at one o'clock p. m., at the same place.

January 21st, 1865, 1 p. m.—The witness appeared pursuant
297 to adjournment, both commissioners being present, and the examination of the witness continued as follows:

To the thirteenth and half interrogatory he saith: My reason for calling the sale by Barnes a pretended sale was that the advertisement was improperly drawn, and that the amount of bonds issued was treated as two millions in amount, and that the bid made by said Barnes was on this basis, when, in fact, but some twelve or thirteen hundred thousand dollars in amount of the two millions dollars of bonds had in fact, at the time of the sale, been issued, and that Barnes did not pay the amount of his bid; and that I have been advised by eminent counsel that these defects invalidate the sale. The property was sold by Barnes and bid in by himself as trustee.

To the fourteenth interrogatory he saith: The sale was hurried

through by his (Barnes's) offering the property for sale and bidding it off in from three to five minutes from the commencement of the sale, and bidding it in himself. Barnes had talked with me at the Newhall House in Milwaukee, just before the sale, and appeared excited, and said that he apprehended another injunction, two having been previously granted against his selling; and I judge that Barnes was excited, and that the sale hurried through, from the further fact that on his way to Milwaukee to attend to the sale Barnes was met in Chicago by his counsel, E. G. Ryan, of Milwaukee, who went from Milwaukee for the purpose of meeting him, and then, under Mr. Ryan's advice, consummated a private sale of the road to me upon the understanding that, if no injunction could be served, the sale of the road to me should be cancelled, and a public sale had, and nothing was to be said about the sale to me; and in case an injunction should be served, then his private sale to me was to be relied upon; and that in pursuance of such agreement the papers relating to the private sale were destroyed in Milwaukee after the sale in Milwaukee by Barnes.

298 To the fifteenth interrogatory he saith: Barnes told me in Milwaukee that Charles Schley, of Milwaukee, soon after the sale, called upon him, as the owner of some six thousand dollars in amount of bonds as I now recollect, and demanded the money on said bonds in accordance with Barnes's bid, which was seventy cents on the dollar, principal and interest; I do not know when and where such demand was made, nor who was present; nor whether any bonds were exhibited to Barnes at the time of such demand; I know nothing of the matter except what Barnes told me; the reason I said that Barnes hurriedly left the State was that Barnes told me of the demand by Schley the evening of the day on which it was made, and expressed fear that legal proceedings would be taken against him by the bondholders unassenting to the sale; and the same night he came to my room between 3 and 4 o'clock in the morning, woke me up, and told me he had decided to leave for his home at Albany, and asked me for a small loan of money to pay towards his expenses, which I gave him, and he left on the Grand Haven boat at 4 o'clock that morning, as I now remember it; I do not know whether he left before completing his business, nor do I know that he employed any means of concealment beyond what I have stated.

To the sixteenth interrogatory he saith: I was interested in bonds secured by the Barnes mortgage, and was in Milwaukee advising with Barnes and the bondholders about the foreclosure; and after the sale I did talk with Barnes and other bondholders about the organization of the Milwaukee and Minnesota Railroad Company, under said foreclosure by the Barnes mortgage; I do not remember that the question of the validity of the foreclosure by Barnes was discussed; and I may have advised, and presume I did advise, with Barnes about the organization of the Milwaukee and Minnesota Railroad Company, founded upon the sale by him.

299 To the sixteenth and a half interrogatory he saith: Barnes did act against my advice in this; I was decidedly in favor of a judicial foreclosure of the mortgage, and so advised Barnes at a

conference in New York between some bondholders and some of the directors of the La Crosse and Milwaukee Railroad Company and said Barnes about the time of default in payment of interest on these bonds on 1st January, 1859, and proposed and advised at such conference that the bondholders should indemnify said Barnes as trustee, and get his power of attorney to employ counsel in Milwaukee to foreclose the mortgage there, and that such foreclosure should be a judicial one, and not one by advertisement under the statutes; I was very urgent that this should be done, and so expressed myself to Barnes. At the termination of that conference it was understood another was to had at Albany the following week to further consider the subject of the foreclosure of the mortgage, and that bondholders were to be invited to such conference, but no such conference was called or held, but that in going to Albany the last of the following week, and on inquiring why such meeting had not been called or held, I learned that a meeting of the board of directors of the La Crosse company had been held there, at which Barnes was present, and demanded possession of the road, and that at his request resolutions giving him possession had been adopted by the board, and that he had left for Milwaukee for the purpose of taking possession. I followed Barnes to Milwaukee some ten days afterwards, and there found he had been to Madison and aided and secured the passage of an act giving him as trustee the right to purchase in the property covered by his mortgage; and finding this state of things, and his determination not to follow my advice for a judicial sale, I acquiesced and consented to his plan of foreclosure, hoping thereby to save something on my bonds by a compromise with prior creditors, whose levies, in my opinion, far exceeded the value of the property.

To the seventeenth interrogatory he saith : I was president of the Milwaukee and Minnesota Railroad Company for two years after its organization, and had exercised the management thereof in connexion with the board of directors of said company; said organization, however, was more nominal than real, as we never had possession of the road; it was in fact a paper organization.

To the eighteenth interrogatory he saith : I did; I so executed such deed or organization under a power of attorney procured
300 by members of the board of directors of the La Crosse company, and sent to me at Troy and Milwaukee, and only knowing a part of the persons I so represented.

To the nineteenth interrogatory he saith : I did.

To the twentieth interrogatory he saith : I did.

To the twenty-first interrogatory he saith : I did not dictate either alone or in connexion with Alexander Mitchell in the drafting of the deed of organization the names of the first directors of the Milwaukee and Minnesota Railroad Company; I advised with Mr. Mitchell and other bondholders as to who should be nominated in said deed of organization as directors of such company; such directors elected me president of said company, but not at my request.

To the twenty-second interrogatory he saith : I did; but it was not my duty to call suchmeeting; it was the duty of the secretary

301 to furnish a list of stockholders to the governor of the State, who should thereupon appoint inspectors of election, and then the duty of the secretary to call the meetings. The secretary neglected his duty, and, as he said, forgot it until the time was past. I had no connexion with the omission to call such meetings or furnish such list of stockholders.

To the twenty-third interrogatory he saith: Upon counsel taken with the board of directors I was instructed by them to cause an appeal to be taken from such order, and under their direction did instruct the attorney for the company to appeal from such order, for the reason that the board of directors suspected some trickery on the part of said Fleming and his associates, and as the annual election was but some two months off, that the interest of the stockholders would be better served by said appeal than by having an election held at that time under such order, as it would be necessary to have a second election some two months thereafter; I suppose the election was prevented by that appeal.

To the twenty-fourth interrogatory he saith: I was so aware; I always regarded the manner in which Barnes conducted the sale and left the State as casting a taint upon the foreclosure and the organization of the Milwaukee and Minnesota Railroad Company, but did not think the sale was thereby rendered illegal until I ceased to be president; since then I have been advised by counsel that the manner in which Barnes conducted the sale rendered it illegal, for the reasons stated in my answer to the fourteenth direct interrogatory; I felt I could, as an honorable man, retain my position as president
302 for the purpose of compromising with prior lien creditors, and thereby save something to the stockholders of the Milwaukee and Minnesota Railroad Company. The advice of counsel has opened my eyes to the enormity of the organization.

The further examination of the witness was here adjourned to Monday, January 23, at 10 a. m.

Monday, January 23, 1865.—The witness and both commissioners being present, the further examination proceeded as follows:

To the twenty-fifth interrogatory he saith: I am unable to state where Mr. Alfred Noxon so stated to me, nor as to the precise time when he so stated, but he did so state to me and to Mr. Cowdray, in the presence of Mr. N. A. Cowdray. The matter was the subject of frequent conversation between Mr. Noxon and myself.

To the twenty-sixth interrogatory he saith: I am now president of the Milwaukee and St. Paul Railway Company; I am not directly interested in opposition to the interests of the Milwaukee and Minnesota Railroad Company, for the reason that I am the largest legally admitted lien creditor on the eastern division of the La Crosse and Milwaukee railroad, owning and holding a large amount of second mortgage bonds secured by mortgage on the eastern division on that road, exceeding in amount five hundred thousand dollars, principal and interest.

To the twenty-seventh interrogatory he saith: I am so interested; such line is a parallel line, but not a competing or rival line, so far as

the competing of rates is concerned; in point of location it is.

303 To the twenty-eighth interrogatory he saith: I am aware of no ill feeling between myself and the officers and agents of the Milwaukee and Minnesota Railroad Company, because I do not know who are the officers and agents of that company. The officers of said company have not, to my knowledge, ever charged me with perjury. There was an anonymous publication circulated charging me as stated in the interrogatory, but I do not know who caused it to be printed or circulated; I have now reason to suspect that such publication was caused to be printed and circulated by Alexander Fleming. I consider him partially insane upon the subject; I consider the officers and the agents of the Milwaukee and Minnesota Railroad Company engaged in an attempt at black-mailing; I have no other bitter feelings against that company or its officers or agents than that; I do not know who are its officers and agents further than that Mr. Fleming, who has appeared in the litigation of the company, is a stockholder.

305 To the twenty-ninth interrogatory he saith: Mr. Cleaveland did commence such suit, and I made the affidavit set forth at length in the interrogatory: the affidavit was prepared by Mr. Ryan, Mr. Barnes's counsel, in Milwaukee, and was sent to me at Troy to verify and return immediately on its execution.

To the thirtieth interrogatory he saith: I believed at the time of the verification of said affidavit that it was true, but facts have come to my knowledge since the sale that convinced me that fraud and deception was practiced on me prior to the time of making the affidavit, by the old directors of the La Crosse and Milwaukee Railroad Company, as to the sale and disposition of the third mortgage bonds, and their object in procuring a foreclosure of said mortgage; I now think that that part of the affidavit concerning five hundred and twenty thousand dollars bonds stated therein to have been sold to raise money for paying the indebtedness of said company was untrue, because I now believe that that amount, or near that amount, of bonds was disposed of at a nominal price, and purchased by the directors of the La Crosse and Milwaukee Railroad Company, or their agents, for their individual benefit.

306 To the thirty-first interrogatory he saith: I did verify a complaint against William Gould and others in the Milwaukee circuit court, as president of the Milwaukee and Minnesota Railroad Company, in connexion with John P. McGregor, and on his representation, as counsel, of the facts set forth in said complaint; I did not read the complaint entirely before verifying it, and do not remember of reading that part set forth in the interrogatory, as the bill of complaint was very lengthy, and brought to me in the evening by Mr. McGregor in great haste for its verification and use; I relied on his statement, because he was an old director in the La Crosse and Milwaukee Railroad Company, and also in the Milwaukee and Minnesota Railroad Company at that time, as I now recollect, and I believed him to be more familiar with the details of making and issuing the third mortgage, and the disposition of the bonds under it, than any other man,

and because he was a man of high standing and commanding influence in the State of Wisconsin. The complaint I verified is now on file in the clerk's office of the Milwaukee circuit court; I do not re-
307 member whether it contained any such clause or paragraph as is set forth in the interrogatory.

To the last interrogatory he saith: I do not know of any.

308 To the first cross-interrogatory he saith: I first became the owner and holder of bonds of the La Crosse and Milwaukee Railroad Company, secured by the third mortgage, so called, by receiving them in payment of a judgment I had against that company, which judgment is referred to by me in my answer to the third direct interrogatory; I was solicited to take such bonds by directors and officers of the company; they represented to me that these bonds were all that was left for the creditors of the company, and that they were using them to take up the floating debt of the company at par, which debt was represented to me not to exceed some four hundred thousand dollars, exclusive of the Chamberlain claim; they also represent to me that if the land-grant bondholders did not accept the third mortgage bonds in payment of past due interest, only about four hundred thousand dollars in amount of these bonds would be issued; I received these bonds at their par value in payment of the judgment I had against the company.

To the second cross-interrogatory he saith: I had no knowledge or information, at the time I made such affidavit, that said third mortgage was executed fraudulently or for a fraudulent purpose. I relied upon the statements of the directors and officers of the La Crosse and Milwaukee Railroad Company as to the bona fides of the mortgage; I cannot specify the names of those who made any particular statement, but I had repeated conversations with nearly all the directors and officers; the statements were the same as stated by me in my answer to the preceding cross-interrogatory.

309 To the third cross-interrogatory he saith: I did afterwards discover that there had been fraud in the execution of the third mortgage, and in the disposition of the bonds secured thereby; I discovered that the bonds amounting to $40,000, pretended to be held by Mr. Buttershall, were in fact held by him for A. C. Gunnison, a director in the La Crosse and Milwaukee Railroad Company, and Gunnison admitted to me they were a part of the $400,000 Chamberlain lot, disposed of by Meigs & Greenleaf at about five cents on the dollar, and that he had used Buttershall's name in forwarding to me a power of attorney to act for him in the organization of the new company, and he (Gunnison) paid the one per cent. assessment for the purpose of paying the expense of the foreclosure of the mortgage and organization of the said company; the stock for such bonds was issued to Buttershall, and by him, immediately, and in my presence, transferred and delivered to Gunnison; I discovered this in June of 1859, at my office in Troy, and learned the facts from A. C. Gunnison, and Mr. Buttershall; I also discovered that William Platt, a director, and the vice-president of the La Crosse and Milwaukee Railroad Company, negotiated for the conversion of $50,000 of said bonds into the stock of

the Milwaukee and Minnesota Railroad Company, at the time of the conversion of said bonds into stock; that he had taken $100,000 of the third mortgage bonds at the sale of the Selah Chamberlain lot of $400,000 of said bonds at five cents on the dollar, and agreed with Aaron S. Bright to let him (Bright) have $50,000 of said bonds at the same price which they had cost him, on condition that he, Bright, would secure a loan for Platt sufficient to pay for the other $50,000, at the rate of five cents on the dollar, and brokerage; I issued the stock to John H. White, or E. R. Tremaine, at Platt's request, and he, Platt, paid the assessment of one per cent. for expenses; I discovered this from Mr. Platt at the time of the conversion of the bonds into stock.

I also discovered that Alfred Noxon who was a director of the La Crosse and Milwaukee Railroad Company, negotiated for the conversion of $75,000 of the third mortgage bonds into stock, in the name of Roscius R. Kennedy, and he, Noxon, paid the one per cent. assessment thereon; Noxon told me that the $75,000 of bonds were a part of the Chamberlain lot of $400,000 sold for five cents on the dollar; I learned this from Noxon at the time of the conversion of the bonds into stock.

I also discovered from N. P. Stanton, president of the La Crosse and Milwaukee railroad, and L. H. Buel, a cousin of said Stanton, after the organization of the Minnesota company, that the
310 $18,000 of bonds subscribed to articles of organization by said Buel belonged to said Stanton, and I inferred from what they said that they were part of the Chamberlain lot of $400,000.

I was also informed by William A. Guest, a director, and ex vice-president of said La Crosse company, after the organization of the Minnesota company, and in the summer of 1859, that the bonds subscribed for the organization of the Minnesota company by George W. McLane belonged to him, and that said McLane was his (Guest's) cover, and the same were a part of the Chamberlain lot of $400,000.

I was also informed by William Watson, of Albany, in the summer of 1859, that the greater portion of the $56,500 of bonds subscribed by said Watson to the articles of organization of the Minnesota company, belonged to George W. Luther, a director in the La Crosse and Milwaukee Railroad Company, and I inferred from what he said that these bonds were a part of the Chamberlain lot of $400,000 of bonds, and that he allowed the use of his name to cover Luther.

These are all the facts I now remember to have discovered, showing the fraudulent disposition of bonds.

To the fourth cross-interrogatory he saith: I have answered this as fully as I can in my answer to the 15th direct interrogatory.

311 To the fifth cross-interrogatory he saith: I did not learn of the facts inquired of in this interrogatory until after I knew that Barnes had hurriedly left the State, and not until the application was mads to exchange bonds for stock, and the collection of the assessment for expenses; I have detailed how, and from whom, I first learned of the disposition of the bonds, in my answer to the 3d cross-interrogatory.

To the sixth cross-interrogatory he saith: Albert C. Gunnison, Aaron S. Bright, Alexander Fleming, N. P. Stanton, William Platt, and Austin Gunnison; since I first discovered the true facts about the execution of the said third mortgage and the disposition of its bonds, I have not had much of anything to do with the Milwaukee and Minnesota Railroad Company, except to urge upon the stockholders of said company the necessity of effecting some kind of a compromise with prior lien creditors, as nothing would ever be realized on said stock.

To the seventh cross-interrogatory he saith: I do; he is the same man; he was engaged in attacking the foreclosure of said third mortgage and the organization of the Minnesota company after the sale; I have frequently heard him declare that said third mortgage and the bonds issued thereunder were fraudulent; he so declared at Milwaukee in the year 1859.

To the eighth cross-interrogatory he saith: I think I learned it from Moses Kneeland, late president of the Milwaukee and Minnesota Railroad Company.

312 To the ninth cross-interrogatory he saith: Said Carpenter commenced proceedings against Barnes, attacking the third mortgage; after the sale he commenced proceedings against Barnes and the Minnesota company, attacking the organization; I do not remember the names of the parties in whose behalf such suits were brought, but believe that two of the parties were Newcomb Cleaveland and Edwin Townsend; I am unable to state more fully the particulars of what he said and did, as I did not charge my mind with it, and it is now nearly six years since it occurred.

To the tenth cross-interrogatory he saith: The facts alleged upon information and belief in the affidavit made by me were furnished to me by officers and directors of the La Crosse and Milwaukee Railroad Company; I had at that time no knowledge, information, or suspicion that said bonds had been used by the directors and officers of that company in any other than a bona fide manner; I did learn that some of the directors held some of said bonds, after the organization of the Minnesota company; I first learned the fact as stated in my answer to the third cross-interrogatory.

To the last cross-interrogatory he saith: I cannot.

RUSSELL SAGE.

313 "*Exhibit A.*"

No. 1 to 200, both inclusive, $500	$100,000
No. 501 to 900, both inclusive, 100	40,000
	140,000
No. 351 to 400, both inclusive, 500	25,000
	165,000
Farm M. bonds	13,000

Assigned for Cleaveland	$120,000
Assigned for Howard	30,000
Mercantile Bank	15,000
	165,000
Mercantile Bank, F. M. bond	13,000

RUSSELL SAGE.

Produced by the said Russell Sage, before us, and by us annexed to the foregoing deposition.

JAS. G. JENKINS,
GEO. F. BETTS, *Commissioners.*

Subscribed and sworn to before us, this 23d day of January, A. D. 1865.

JAS. G. JENKINS,
GEO. F. BETTS,
Commissioners.

JAS. G. JENKINS,
R. J. HILTON,
Commissioners.

314 UNITED STATES OF AMERICA, *Northern district of New York, ss:*

We, Robert J. Hilton and James G. Jenkins, the commissioners named in the annexed commission, do hereby certify, in return thereto, that we summoned before us William Barnes, the witness named therein, and having first carefully cautioned and sworn the said witness to testify the truth, the whole truth, and nothing but the truth, in answer to the interrogatories about to be propounded to said witness, we did carefully read over to said witness the interrogatories and cross-interrogatories to the said commission annexed, to be propounded to the said witness, and that the answers and statements of the said witness were reduced to writing, some of them by the clerk of the Commissioner Hilton in the presence of both commissioners, and some of them by the Commissioner Jenkins in the presence of both commissioners, and in the presence of the witness; and after carefully reading to the witness the answers and statements of such witness, he subscribed the same in the presence of both of said commissioners; that said answers and statements are contained in the papers hereto annexed, and are signed on each sheet by both commissioners.

We further certify that the deposition of said witness was taken at the city of Albany, New York, on the 27th, 28th, 30th and 31st days of January, and the 1st, and 2d and 3d days of February, A. D. 1865.

We further certify that we have retained the annexed deposition for the purpose of sealing the same and depositing it in the post office, addressed to the clerk of the court for which the same was taken.

In witness whereof, we have hereunto set our hands and seals at the city of Albany, this third day of February, in the year one thousand eight hundred and sixty-five, and of the independence of the United States the eighty-ninth.

JAS. G. JENKINS, [SEAL.]
R. J. HILTON, [SEAL.]
Commissioners.

Commissioners' fee, $78 75.

315 UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

[SEAL.] The President of the United States of America to James G. Jenkins, esq., and Robert J. Hilton, esq., greeting:

Know ye, that in confidence of your prudence and fidelity, you have been appointed, and by these presents you, or any one or more of you, are invested with full power and authority to examine William Barnes, on his corporal oath, as a witness in a cause depending in the district court of the United States for the district of Wisconsin, wherein Frederick P. James, Abram M. Brewer, E. Bradford Greenleaf, and others are complainants, and the Milwaukee and Minnesota Railroad Company and others are defendants, on the part of the defendants, upon the interrogatories annexed to this commission, and therefore you are hereby commanded that you, or any one or more of you, at certain days and places to be appointed by you for that purpose, do cause the said William Barnes to come before you, and then and there examine him on oath upon the said interrogatories, and that you take such examination and reduce the same into writing, and return the same annexed to this writ, closed up under your seal, or the seals of any one or more of you, into the said district court of the United States before the judge thereof, with all convenient speed.

Witness, the Honorable Salmon P. Chase, Chief Justice of the Supreme *District* Court of the United States of America, for the district of Wisconsin aforesaid, at the city of Milwaukee, in said district, this thirtieth day of December, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the United States the eighty-ninth.

A. SCOTT SLOAN, *Clerk.*

316 *Rules.*

On the receipt of the commission made out as aforesaid, by any one of the commissioners named, he shall give notice to the other commissioners named therein of the time and place of taking the depositions, if possible, and if any of the commissioners are absent at the execution of said commission, any one or more present may proceed to execute the same (unless otherwise expressly directed therein) as if all were present; but they must certify that those absent have been duly served with notice of the time and place of executing said commission, or the reasons for their not being so notified.

The persons to whom such commissions shall be directed, or any one or more of them, unless otherwise expressly directed therein, shall execute the same, as follows:

First. They, or any of them, shall publicly administer an oath to the witnesses named in the commission, that the answers given by such witnesses to the interrogatories proposed to them shall be the truth, the whole truth, and nothing but the truth.

Second. They shall cause the examination of each witness to be reduced to writing and to be subscribed by him, and certified by such of the commissioners as are present at the taking of the same.

Third. If any exhibits are produced and proved before them, they shall be annexed to the depositions to which they relate, and shall, in like manner, be subscribed by the witness proving the same. (This section must be understood to refer to such papers as can be produced upon the examination.) If the papers referred to be a record not subject to the control of the party or the commissioners, it will be sufficient to annex a copy, and the original may be produced on the trial separate from the commission.

Fourth. The commissioner or commissioners shall subscribe each sheet of the depositions, and annex all the depositions and exhibits to the commissions, upon which the return shall be indorsed, and shall close them up under their or his seals, and shall address the same, when so closed, to the clerk of the court from which the commission issued, at his place of residence, with the style of the suit.

Fifth. If there is or is not a direction on the commission to return the same by mail, they or he shall immediately deposit the packet so directed in the nearest post office.

Sixth. If there be a direction on the commission, to return the same by an agent of the party who sued out the same, the packet, so directed, shall be delivered to said agent.

317 Circuit court of the United States for the district of Wisconsin, in equity.

FREDERICK P. JAMES and OTHERS
vs.
THE MILWAUKEE and MINNESOTA RAILROAD Company and others.

Interrogatories to be propounded to William Barnes, a witness to be produced, sworn, and examined on behalf of the Milwaukee and Minnesota Railroad Company, before James G. Jenkins, esq., commissioner.

1 interrogatory. What is your name, age, residence, and place of business?

2 interrogatory. Are you the same William Barnes named a trustee in a certain mortgage or deed of trust executed by the La Crosse and Milwaukee Railroad Company, bearing date on the 21st day of June, 1858, and a certain supplemental mortgage or deed of trust, dated August 11, 1858, to secure an issue of two millions dollars bonds, and usually called the third mortgage of the La Crosse and Milwaukee Railroad Company?

3 interrogatory. State when, where, and by whom you were requested to become a trustee in the first of said mortgages, dated June 21, 1858; and state all that you know of the facts and circumstances of the issue of that mortgage, and with what purpose and design the same was made, executed, delivered, and accepted, so far as concerns yourself in accepting said mortgage, and so far as you know the motives and designs of the La Crosse and Milwaukee Railroad Company in making, executing, and delivering the same.

4 interrogatory. State whether or not the said mortgage was accepted by you with the design or intention, or for the purpose of foreclosing the same as soon as the first interest warrants or coupons should become due thereon, and whether or not, to your knowledge, the said company made and delivered the same with such design or intention.

5 interrogatory. State for what purpose and with what intention or design on your part, and, so far as you know, on the part of the La Crosse and Milwaukee Railroad Company, the said second
318 or supplemental mortgage to you, dated August 11, 1858, was made, executed, delivered, and accepted.

6 interrogatory. State whether or not the said supplemental mortgage was made, executed, delivered and accepted, with the purpose, design, or intention on your part, and, so far as you know, on the part of the said company, of having the same speedily foreclosed?

7 interrogatory. State whether or not any and what resolution of the board of directors of said company was delivered to you by Hon. D. V. N. Radcliff, of the city of Albany, assistant secretary of said company, or by any and what other person or officer of said company, expressing the purpose for which said mortgage was to be executed.

8 interrogatory. If, in answer to the preceding interrogatory, you answer that any such resolution was delivered to you by any person, attach the same to your answer to this interrogatory if the same is now in your possession; and if not in your possession, state where the same now is, or, if the same is now destroyed or lost, state here and now the substance of said resolution as fully as you are able.

9 interrogatory. If, in answer to either of the two last preceding interrogatories, you say that any such resolution as is there inquired of was delivered to you by any officer of said company, and that the same is not now in your possession, or is lost or destroyed, state here and now whether the following is a copy or substantial copy of said resolution, viz:

Whereas, a large floating debt has accumulated for rolling stock and materials furnished and provided and labor performed for the La Crosse and Milwaukee Railroad Company, which remains unpaid and and is unsecured by any mortgage or other security upon the road or other property of said company; and whereas, a large number of persons along the line of the road in Wisconsin have mortgaged their farms to the company to aid in the construction, which farm mortgages have been used by the company with the stipulation on its part to pay the interest accruing thereon, and a failure to pay which in-

terest would produce great distress among the farm mortgage stockholders; and whereas, it is necessary that immediate provision be made for paying off such floating debt of the company, and for the payment of the accrued and accruing interest on such farm mortgages and the other just indebtedness of the company, and also to provide for taking up and cancelling said farm mortgages when deemed expedient; Therefore,

Resolved, That an issue of bonds of the said company be and is hereby authorized, to the amount of $2,000,000, to be secured by a mortgage upon the entire line of the road from Milwaukee to La Crosse, including all depots, depot grounds, lots, buildings, stations, materials, line, track improvements of every kind, all rolling stock, cars, locomotives, and all real and personal property appertaining to the said line of railroad, said bonds to be in the sums following: 1,000 bonds in sums of $500 each, and 1,500 bonds in sums of $1,000 each, payable in thirty years from date, bearing interest at the rate of seven per cent. per annum from the first day of July, 1858, payable semi-annually after one year, at the Albany Exchange Bank, in the city of Albany. The first payment of interest to be made on the first day of July, 1859, said bonds to be printed in the usual form with coupons, and the mortgage securing the same to be executed by the president and secretary of said company to William Gould, of the city of Albany, trustee for said bondholders, and providing in case of death, resignation, or removal of said trustee, for the appointment of a successor on application to one of the justices of the supreme court of the State of New York; also, a sinking fund to provide for the gradual payment of said bonds, viz: the sum of $25,000 annually, the first payment to be made on the first day of July, 1861. Said trustee shall for the payment of the sinking fund advertise for the purchase of said bonds by giving ten days notice in New York, Albany, and Milwaukee newspapers; said mortgage so to be executed subject to $922,000 outstanding bonds, secured by a first mortgage upon the
319 eastern division; also to Milwaukee city bonds $314,000; also $1,000,000 second mortgage eastern division, $4,000,000 mortgage upon the line of railroad from Portage City to La Crosse, and subject to the 2d mortgage of about $200,000 on the road from Portage City to La Crosse, and from junction, near the village of Tomah, to the terminus on lake or river St. Croix.

10 interrogatory. If, in answer to the last three preceding interrogatories, or either of them, you answer that such or a similar resolution was handed to you by any person, for the purpose inquired of, state here and now whether you made any and what examination as to the power of said company to make said mortgage before accepting the same.

11 interrogatory. Did you at some time and when take any and what steps to foreclose the said mortgage and supplemental mortgage; state fully all that you did in that behalf; state whether you was requested to foreclose the same by any and what holders of the bonds secured by said mortgage, and if yea, state what amount of bonds were held or represented by those who requested you to fore-

close said mortgages, whether you retained any and what counsel in that behalf; and state as fully and in detail as you are able all the steps taken by you, and all the things done and caused to be done by you, to foreclose said mortgage.

12 interrogatory. If, to the last interrogatory, you answer that you did foreclose said mortgages by a sale of the mortgaged premises on the 21st day of May, A. D. 1859, under the power of sale in said mortgages, state here and now whether you did so by advice or connivance of the officers and directors of said company, or upon your own responsibility and in discharge of your duty as trustee, or otherwise.

13 interrogatory. Did you conduct the sale of said premises on the 21st of May, 1858, in person or otherwise, and where was said sale made.

14 interrogatory. If, in answer to the last preceding interrogatory, you answer that you conducted the said sale in person, at Milwaukee, state here and now, whether that sale was conducted by you: whether openly, deliberately and fairly, or secretly, clandestinely, hurriedly and dishonestly, or otherwise.

15 interrogatory. State whether or not, after said sale, you assisted in organizing a corporation, under the name of the Milwaukee and Minnesota Railroad Company; if yea, when and where was the same organized, and where did you remain, from the time of said sale, until the organization of the Milwaukee and Minnesota Railroad Company.

16 interrogatory. How long were you in Milwaukee, at the time of the said sale, and where did you stay or board; and how did you leave Milwaukee, by the ordinary conveyance from said city, or did you secretly leave said city, after said sale.

17 interrogatory. Was Russell Sage, prior to said sale a bondholder, or interested in the bonds secured by said mortgages to you; if yea, did the said Sage request you to make said foreclosure, and was said Sage in Milwaukee at the time said sale was made by you, and did he, as such bondholder, counsel and advise with you as to said foreclosure, and the manner of conducting the same; if yea, were said proceedings conducted as they were conducted with the knowledge and approbation of said Sage, or if said Sage objected to any part of such proceedings at the time they were being had, state what part thereof the said Sage objected to.

18 interrogatory. State what bondholders were most active in advising about said sale, and in the organization of the Milwaukee and Minnesota Railroad Company.

19 interrogatory. Were you the owner or holder of any of the bonds secured by the said mortgages to you prior to the foreclosure of the said mortgages, and the organization of the Milwaukee and Minnesota Railroad Company; if so, state to what amount and upon what consideration, and in what way you received or became interested in the same.

320 20 interrogatory. Prior to the foreclosure of the said mortgages and the organization of the Milwaukee and Minnesota

Railroad Company, were any of the bonds secured by said mortgages held by any and what other person or persons in trust for you.

21 interrogatory. Did you procure the passage of any and what act of the legislature of the State of Wisconsion, authorizing you to become a purchaser of said mortgaged premises at the sale to be conducted by you; if yea, state why such law was deemed necessary, by whom was it drafted; and what steps were taken by you, if any, to procure its passage by the legislature, and its approval by the governor of the State of Wisconsin.

22 interrogatory. If, in answer to the last preceding interrogatory, you answer that a law was procured by you to be passed, then state here and now whether the same is chapter 10 of General Laws of the State of Wisconsin, passed in A. D. 1859, entitled "An act supplemental to chapter 79 of the Revised Statutes, entitled of 'Railroads.'"

Last interrogatory. Do you know any other matter or thing which may or can be of benefit or advantage to any of the parties to this suit; if so, set the same forth fully and at large.

MATT. H. CARPENTER,
Solicitor.

321 Circuit court of the United States in and for the district of Wisconsin.

FREDRICK P. JAMES and OTHERS
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company and others.

And now comes the complainants by Finches, Lynde & Miller, their solicitors, and name, as commissioner to take the deposition of William Barnes, Robert J. Hilton, esq., of Albany, New York, and said complainants not consenting or in any way acquiescing in the appointment of the commissioner named by said complainants, but protesting against the same, propound to said William Barnes the following cross-interrogatories:

Cross-interrogatories to be propounded to the witness William Barnes, under and by virtue of the annexed commission to be issued to Robert J. Hilton, James G. Jenkins, or such other commissioner as may be named by the complainants.

First cross-interrogatory. Have you any knowledge, information or belief as to how or in what manner the bonds to secure the payment of which the mortgage or deed of trust and supplemental mortgage mentioned in the said second interrogatory were disposed of, or to whom?

Second cross-interrogatory. Did you ever at any time, and if yea, when, have or hold either directly or indirectly any interest of any kind in said third mortgage bonds? If yea, state the nature, character or kind of interest you had, and the extent of that interest.

Third cross-interrogatory. Do you know, of your own knowledge,

anything about the truth of the facts stated or recited in the preamble set out in the 9th interrogatory? Did you make any inquiries about the truth or falsity of the facts set out in said preamble?

Fourth cross-interrogatory. If you answer the 11th interrogatory that you did foreclose the said mortgage inquired about in said interrogatory, please state how and in what manner you foreclosed the same; whether you met with any opposition, and from whom; whether injunctions were issued, and at whose suit, and what became of said injunctions; and state whether one Matthew H. Carpenter, a lawyer of the city of Milwaukee, State of Wisconsin, was one of the most active and energetic opponents that you encountered to said foreclosure.

Fifth cross-interrogatory. If, in answer to the last cross-interrogatory, you shall say that one Townsend commenced a suit to en-
322 join said sale, state whether said Townsend's suit was settled or agreed to be settled, and state whether or not, in consideration of such settlement or agreement to settle, said Townsend discontinued his said suit. If you should not have mentioned in your answer to the preceding interrogatory the name of said Townsend, then state whether said Townsend did commence a suit, and whether said suit was settled or agreed to be settled.

Sixth cross-interrogatory. Did you make out affidavits of said sale? If yea, what did you do with said affidavits?

Seventh cross-interrogatory. Was you not somewhat excited on the day of the sale? Was you not afraid that injunctions or some other process from the court might be issued against you enjoining the sale, and did you not in the most hurried and rapid manner read the notice of sale and putting up the property; how long was you in reading the notice of sale and crying the property?

Eighth cross-interrogatory. Who bid in the property? How and in what manner was the bid paid, and by whom? Did said bid more than pay the full amount advertised to be due on the mortgage; if yea, how and in what manner was said surplus paid? How much money was paid on said bill?

Ninth cross-interrogatory. Where did you go after you made said sale? Where did you keep yourself from the time you made said sale until you left the city of Milwaukee? Did you keep your apartments locked and keep yourself secluded the greater part of the time? Did you change your room at the hotel? Where and when were the papers that you executed after the sale drawn up, and by whom? Where did you sign them? Was the room you were in locked at the time you signed said papers? Had not said papers been drawn up in advance, and were they not all ready to be signed as soon as the sale was made?

Tenth cross-interrogatory. Was not the signing and transferring of papers done secretly and with locked doors for the express purpose of avoiding the service of injunction or other process upon you?

Eleventh cross-interrogatory. Had all the holders of bonds secured the mortgage to you assented to the bidding in of the property by you, and paying therefor in the said bonds? If nay, what amount of

outsanding so-called third mortgage bonds were there at the date of said sale, which did not agree to or assent to said property being
323 sold and paid for in said third mortgage bonds?

Twelfth cross-interrogatory. Prior to your leaving Milwaukee, and after said sale, had any person, and who, as a third mortgage bondholder, made a demand upon you for the pro rata amount due upon his bond or for the amount of his bond?

Thirteenth cross-interrogatory. What time of day did you leave Milwaukee? What was the occasion or reason of your leaving at the time you did leave? Did you borrow any, and what amount of money to leave at the time you did leave? How long before starting had you formed the purpose to start?

Fourteenth cross interrogatory. Had you any fear that any party would bring a suit against you? Had you not been threatened with suits? Have you ever, and when, been to Milwaukee since you hurriedly left that city?

Fifteenth cross-interrogatory. Did you, as trustee or otherwise, ever advise or consult with Albert C. Gunnison, Stephen H. Alden, N. P. Stanton, or any officer or director of the La Crosse and Milwaukee Railroad Company about said sale, or the foreclosure of said mortgage, or did you ever at any time hear said parties, or any officer or director of said company express any disapprobation of the said foreclosure?

Sixteenth cross-interrogatory. Did you know at the time of the sale under the mortgage to you, that any of the directors of the La Crosse and Milwaukee Railroad Company were interested in said third mortgage bonds? If yea, what directors? give their names.

Seventeenth cross-interrogatory. Do you know the fact that said directors of said company, or some of them, did at the time of the said sale have an interest in so-called third mortgage bonds? If yea, state how you know the fact, and give the name or names of the directors.

Eighteenth cross-interrogatory. Was you advised by any party to settle with Townsend, or did you advise any party to settle with him?

325 Nineteenth cross-interrogatory. What amount did you receive as trustee and for your time and services in and about the foreclosure of the said mortgage, and how was the same paid?

Twentieth cross-interrogatory. Can you state any other matter or fact which may be of benefit or advantage to the parties to this suit? If yea, set forth the same fully and at large in your answer to this.

FINCHES, LYNDE & MILLER,
Solicitors for Complainants.

326 UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, A. Scott Sloan, clerk of the circuit court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts

therefrom, and of the whole thereof, now on file and remaining of record in my office.

In testimony whereof, I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukee, in the said district of Wisconsin, this 30th day of December, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the said United States the eighty-ninth.

[L. S.] A. SCOTT SLOAN, *Clerk.*

[Rev. stamp, cancelled.]

327 Circuit court of the United States for the district of Wisconsin, in equity.

FREDERICK P. JAMES and OTHERS
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Co. and others.

Deposition of William Barnes, a witness produced, sworn, and examined before the undersigned, Robert J. Hilton and James G. Jenkins, commissioners, under and in pursuance of the annexed commission issued out of and under the seal of the circuit court of the United States for the district of Wisconsin.

The said William Barnes, being first duly sworn by one of us that he would true answers make to the interrogatories and cross-interrogatories proposed and propounded to him, and that his answers thereto should be the truth, the whole truth, and nothing but the truth, did depose and say as follows:

To the first interrogatory he saith: My name is William Barnes; my age is forty years; I reside at Albany, New York; and my place of business is in the insurance department, in the State Hall, at Albany, New York.

To the second interrogatory he saith: I am.

328 To the third interrogatory he saith: According to my best recollection and belief I was requested to become a trustee in the first of said mortgages, dated June 21st, 1858, at Albany, New York, by Mr. N. P. Stanton, the president of said railroad company, in the month of June, 1858. The facts and circumstances of the issue of that mortgage, and the purpose and design with which the same was made, executed, and delivered, were set forth and embodied in the resolutions passed by the board of directors of said company, on the first day of June, 1858, authorizing the execution of said mortgage, and the motives and designs of said company in making, executing and delivering the same were, according to my best knowledge, information, and belief, correctly set forth and embodied in said resolutions.

So far as concerns myself I have positive and absolute knowledge, and therefore declare that I had no other purposes, motives, or designs in accepting said mortgage than to faithfully and honestly perform in my part the duties and obligations of the trust as set forth in the mortgage, and charging for my services a reasonable and fair com-

pensation. There was no design or purpose of any kind on my part to injure, impair, or affect in any manner the legal or equitable rights or interest of any person or corporation, and I should not have accepted the trust with a knowledge that any such purpose, motive, or design existed on the part of said railroad company. All charges or imputations from any source whatever of any fraudulent or improper designs or purposes on my part in accepting said trust are false and untrue in fact. The project of issuing a third mortgage, as the only practicable scheme of providing for the necessities of the company had been discussed and considered at the annual meeting of the stockholders in May 1858, and approved by a majority attending said meeting, as I am informed and believe.

329 To the fourth interrogatory he saith: The said mortgage was not accepted by me with the design or intention, or for the purpose of foreclosing the same as soon as the first interest warrants or coupons should become due, and the said company did not, to my knowledge, make and deliver the said mortgage to me with any such design or intention.

To the fifth interrogatory he saith: The supplemental mortgage, dated August 11th, 1858, was executed and delivered at my suggestion and demand, in conformity to the usual provision contained in the original mortgage, which demand was made in writing by a letter, a copy of which is here produced to the commissioners, and annexed to this deposition, and is marked Exhibit A. The said supplemental mortgage was made, executed, and delivered, and accepted with the purpose, design, and intentions therein expressed and set forth in said letter marked Exhibit A, so far as I know.

To the sixth interrogatory he saith: The supplemental mortgage was accepted on my part with the same purposes, and designs, and intentions as the original mortgage, and so far as I know it was made and executed by the company with the same purposes, designs, and intentions. I did not intend to speedily foreclose the same, unless in the future I might deem it my duty, under then existing circumstances (which I could not anticipate or determine in advance) to do so. My intentions were simply and only to perform the trusts devolved upon me, regarding also the best interests of all concerned, so far as I could in the performance of my duties as trustee. So far as I know, the said supplemental mortgage was not made and delivered with the design or intention on the part of the company of having the same speedily foreclosed. On the contrary, I understood that per-

330 sistent efforts were being made to procure a conveyance of the lands claimed from the governor of Wisconsin, and to complete the road to the Mississippi river, and to fund all past due mortgage coupons, and the floating and judgment debts, by the third mortgage bonds, and to raise the credit of the company, and that a verbal arrangement and agreement was consummated, on the opening of the road, with Selah Chamberlain, to pay the accruing interest on the third mortgage bonds, with the particular details of which agreement I am not conversant; that said Chamberlain appointed a time to execute said agreement in writing, but failed to do so, as he was advised by

counsel that it would impair his lease and judgment. In my opinion strenuous and persistent efforts in various directions were made in good faith by the board to preserve the old organization, if possible, and to extricate it from the labyrinth of embarrassments and complications in which its affairs were involved. I do not think any board of directors in the country could have succeeded in doing so.

To the seventh interrogatory he saith: The resolutions authorizing the execution of the mortgage, and expressing the purpose for which said mortgage was to be executed, were handed to me by some person, I presume by Judge D. V. N. Radcliff. I have copies of several resolutions engrossed in my third mortgage register, which are certified to by Lockwood L. Doty, esq., the secretary of said company.

To the eight interrogatory he saith: I do not find among my papers the original certified copies of said resolution in perfect form, except those forming part of my third mortgage register book, and I do not want to tear such certified copies from my register. I here produced to the commissioners, to be annexed to the commission, and to be marked Exhibit B., a copy of such certified copies of said

331 resolutions as certified to by Lockwood L. Doty, esq.

332 To the ninth interrogatory he saith: Copies of such resolutions are attached to my deposition, marked Exhibit B.

To the tenth interrogatory he saith: I examined the charter of said company, and the laws of Wisconsin, as to the power of said company to execute the proposed mortgage before accepting the trust, but I have not now a distinct recollection of what special examination was made. I undoubtedly became satisfied, before accepting the trusteeship, as to the power of the company to execute the mortgage. The mortgage was drawn, I believe, by Mr. John H. Reynolds, of Albany, N. Y., in a form somewhat similar to other mortgages executed by the company.

333 To the eleventh interrogatory he saith: All the negotiations with Mr. Selah Chamberlain, for the payment of the January and other interest coupons on the third mortgage, having failed of final consummation, and the governor of Wisconsin having refused to grant his certificate, and to convey the lands claimed by the company, covered by the land-grant mortgage, and many judgments and other creditors pressing their claims, and the road itself being in the actual possession of Mr. Selah Chamberlain, claiming a very large amount from the company, and the other complications and embarrassments, unnecessary now to enumerate, in which the affairs of the company were involved, convinced, and that it was useless and nugatory to wait for the company to raise funds for the payment of the January interest in the third mortgage, and the previous mortgages, and other liens. After the most full examination and consideration of the matter in my power to make, in January, 1859, when it became my duty to consider and act in the premises, I became fully convinced that all organizations must of necessity take place under the third or some previous mortgages, that the old stockholders could never carry the crushing debts, embarrassments, and complications in which the affairs of the company had become inextricably involved. This opinion

has been more than verified by the subsequent history of the road, notwithstanding the abnormal and unexpected advantages resulting from greatly enhanced prices for freight, and the full and partial blockade of the Mississippi river during the past four years. In the exercise, therefore, of the discretion vested in me as trustee under the third mortgage I deemed it my duty to take possession for the benefit of my "cestui que trust," and initiate proceedings for the foreclosure of said mortgage.

Accordingly, on the 19th day of January, 1859, without any consultation, advice, or direction of the board of directors or officers, I took possession of the Albany office of the company, and placed my name as trustee upon the door, and took an acknowledgement from the clerk, Mr. Cornwall, that he was in my employment as trustee. On the 21st day of January, 1859, I arrived at Milwaukee, and on the next day, January 22d, I took possession of the office at Milwaukee, and put up signs as trustee, took acknowledgement from Mr. E. P. Whaling that he was in my employ as trustee, and ordered inventories to be made out. I also served a written notice upon Mr. Selah Chamberlain to deliver up all property, &c., in his possession, covered by the trust deeds, a copy of which will be found in the
334 letter book in the Milwaukee office, and a copy of which I here produce to the commissioners to be annexed to my deposition, and to be marked Exhibit C, and I also produce to be annexed, and to be marked Exhibit D, a copy of Mr. Chamberlain's answer. This letter was delivered to me on the 27th day of January, and on the 29th January I obtained searches in the district court of the United States for the judgments against the La Crosse and Milwaukee Railroad Company, and against the Watertown and Madison Railroad Company, and on the 31st day of January, 1859, I obtained searches from the clerk of circuit and county courts of Milwaukee county against the company. The question then arose as to whether it was better to foreclose the mortgage by advertisement, under the power of sale contained in the mortgage, or by bill of chancery in the State or United States courts. I hesitated as to which mode was expedient. If I foreclosed by suit I anticipated that dilatory defences would be interposed by litigious persons for improper purposes and objects, thus delaying the foreclosure until other sales might take place on previous mortgages, judgments, and other liens. The road had already been advertised for sale on the Newcomb Cleveland judgment. Another matter caused considerable embarrassment and reflection. I deemed the protection, if possible, of the farm mortgage bondholders having interests in the third mortgage through D. Stoddard Judd, their trustee, as an apparent and obvious duty specially incumbent on me as trustee, and also the general protector of the interests of all the bondholders in case of a sale for cash, either under a foreclosure by suit or by advertisement of the third mortgage. I was apprehensive that with all the previous liens, judgments, debts, and existing complications, only a small sum in cash could be realized on such sale, which, when divided, would make but a small percentage to the bondholders. I consulted with bondholders, and with Edward

G. Ryan, esq., of Milwaukee, and he either suggested or approved of my suggestion, that the best manner of providing for the exigency would be to procure the passage an act by the legislature of Wisconsin, authorizing the trustee on a sale to bid in the road for the common benefit of all the bondholders. I drew up an act for this purpose, and one was drafted by Mr. Ryan. On the 31st day of January, 1859, I went to Madison, the legislature being in session, for the purpose of procuring the passage of such an act, which it was proposed should be a general act, such an act applicable not to this particular case but to all similar cases. The bill was introduced into the senate and passed that body on the 5th day of February,
335 1859, only two senators voting against the passage of the bill; on the 7th day of February, 1859, the bill passed the house unanimously under a suspension of the sales for this purpose; the bill was approved by the governor on the 8th day of February, 1859. I think that the bill was passed upon, considered, and approved by the railroad committee of the senate, and the judiciary committee of the lower house. Said bill is chapter 10 of the Session Laws of Wisconsin, year 1859. approved February 8, 1857. The object and purposes of the bill were fully explained by me to the committee and to the governor, and also to many members of both houses of the legislature, and it received their cordial approval. I returned to Milwaukee after the passage of the act and consulted with Mr. Ryan, who was retained as counsel for the trustee, and after full consultation and deliberation it was deemed best to foreclose by advertisement.

A request to foreclose the mortgage and an agreement to indemnify the trustee was signed by Mr. Russell Sage and other bondholders, dated February 11th, 1859, as will appear by such original request attached to the organization papers of the Milwaukee and Minnesota Railroad Company. My original copy of such organization papers was borrowed by Mr. Russell Sage. and has never been returned to me. The amount of bonds represented by those signing such request was, I believe, $292,800, and the persons signing the request are specified in the papers were produced by me and to be attached by the commissioners, and marked Exhibit E, which is a copy of such request. A prior request to me had been signed by Mr. Sage alone, but a new one in a modified form was drawn up, a copy of which is, according to my best recollection, hereto attached marked Exhibit E. An advertisement of sale was drawn up, dated Albany, February 24th, 1859, and duly published in a newspaper in Milwaukee, the Free Democrat, and in the New York Tribune, Times, and Evening Post, being one more paper in New York than was required by the mortgage. The time and place of sale were stated to be on the 26th day of March, 1859, at 12 m., at the court-house in the city of Milwaukee. Before the day of sale, and on the 25th day of March, 1859, the circuit court of Wisconsin, Dodge county, granted an order to show cause why an injunction should not be granted, restraining the sale, returnable before Judge A. Scott Sloan, in the village of West Bend, in the county of Washington, in said State, on the 6th

day of April, 1859, at 2 o'clock p. m., and enjoining and re-
337 straining any sale of said railroad by the trustee in the meantime, at the suit of George Morgan, Edwin Townsend and others against said railroad company, and said trustee and others. This injunction order was served late in the evening of the 25th day of March, 1859. Affidavits were filed showing cause against the issue of a permanent injunction, and after full argument by counsel the application for an injunction was denied by the court, and the temporary injunction dissolved. In consequence of the injunction, the sale was postponed to the 23d day of April, 1859, at the same hour and place. Another injunction was served a few moments before adjourned time of sale, at the suit of Newcomb Cleveland, and one I think was also served at the suit of Edwin C. Litchfield of New York, and the sale was again adjourned to the 21st day of May, 1859, at the same time and place. A large number of full and explicit affidavits were prepared and adequate preparations made in order to dissolve the new injunction or injunctions, and the same having been dissolved, or withdrawn before the time of sale, the said sale took place according to the last adjournment on Saturday, the 21st day of May, 1859, at the court-house in Milwaukee, pursuant to the notice of sale and adjournment. Notice of the said adjournment of the sale was duly published in the newspapers in which the advertisement originally appeared.

The road was bid in by the trustee pursuant to the said act of the legislature of Wisconsin; the bid was in writing, a copy of which I here produce to the commissioners to be attached to my deposition and to be marked Exhibit F. Reorganization papers were drawn up by Mr. Ryan, and executed by the trustee and many bondholders in duplicate or triplicate. My copy was borrowed by Mr. Russell Sage, and has never been returned to me by him. Mr. Russell Sage acted for himself, and as agent and attorney for many of the bondholders; during the foreclosure he was not employed by, and did not act under the direction of the trustee. Mr. Sage, I believe, favored a foreclosure by suit instead of by advertisement, and was at first somewhat opposed to the law passed by the legislature allowing the trustee to bid in in trust for the bondholders. Preparations were made for a private sale under the power of sale contained in the trust deed, and also for a foreclosure by bill in the United States court, which became unnecessary.

338 To the twelfth interrogatory he saith: I foreclosed the said mortgage on my own responsibility and in the discharge of my duty as trustee, and not by the advice or connivance of the officers and directors of said company. I should have proceeded to the foreclosure under the then existing circumstances, even if legal proceedings had been taken by the directors to oppose the foreclosure. I understood that the directors, or a portion of them, were dissatisfied because I took possession of the offices in January and steps for foreclosure without consulting them. It was not until on or about the 8th day of March, 1859, that the directors assented to my taking possession, at which date a resolution was passed, a copy of which I here

produce to the commissioners, to be annexed to my deposition, and to be marked Exhibit G.

To the thirteenth interogatory he saith: I conducted the sale of said premises in person on the 21st day of May, 1859, and said sale was made at the court-house in the city of Milwaukee.

To the fourteenth interrogatory he saith: Said sale was conducted by me in person, openly, deliberately, and fairly; and not secretly, clandestinely, hurriedly, or dishonestly.

To the fifteenth interrogatory he saith: I did assist after said sale in organizing a corporation under the name of the Milwaukee and Minnesota Railroad Company. My copy of said organization papers having been borrowed by Mr. Sage, and not returned, I can-
339 not speak with entire certainty as to dates, but I think said corporation was organized on Monday, the 23d day of May, 1859, and that the papers were signed at the office of Mr. Ryan on that day. I remained from the time of said sale until the said company was organized at my hotel, the Newhall House, with my wife, going in and out as usual, part of the time at Mr. Ryan's office. I was accessible at all usual hours to any person who desired to see me. I remained with my wife at the Newhall House for several days afterwards, and until Friday, the 27th day of May, 1859, in the usual manner of guests at hotels.

To the sixteenth interrogatory he saith: I was in Milwaukee at the time of said sale, according to my best recollection and belief, and as appears from my hotel bill, for six and three-quarter days, and boarded with my wife at the Newhall House, taking my meals at the public table and ready to see any and all persons who desired to call on me. My wife and I made several calls on acquaintances in Milwaukee, and several were made on us by gentlemen and ladies of that city. I left the city by the ordinary conveyance and not secretly in any respect.

To the seventeenth interrogatory he saith: Russell Sage was, prior to said sale, a large bondholder, and interested in the bonds secured by said mortgages. Said Sage was the first signer of the written request to foreclose the mortgage, and he was in Milwaukee at the time of said sale. Mr. Sage as such bondholder did counsel and advise with me and with Mr. Ryan as to the said foreclosure and the
340 manner of conducting the same; the proceedings were conducted as they were conducted with the knowledge of said Sage, whether with his approbation entirely I cannot say. Mr. Sage at first favored a foreclosure by suit instead of by advertisement, and rather objected to the passage of the act by the legislature allowing the trustee to bid. I think that Mr. Sage finally assented to Mr. Ryan's opinion and my own, as to the best mode of foreclosure, but of this I am not certain. I do not recollect any part of the proceedings that were otherwise especially objected to by Mr. Sage.

To the eighteenth interrogatory he saith: I think the bondholders most active were Russell Sage, Horatio G. Gilbert and Alexander Mitchell. Mr. Sage was more active than any other bondholder.

To the nineteenth interrogatory he saith: I was prior to the fore-

closure of the said mortgages, the absolute owner and holder of ten thousand dollars only of said third mortgage bonds. I received ten thousand dollars in amount of said bonds, from the La Crosse and Milwaukee Railroad Company, on account of services as trustee, in the year 1858. These bonds were taken against my wishes, and for the reason that I could not get cash from the company for the services I had performed. I purchased twenty thousand dollars in amount of said bonds through Horatio G. Gilbert, cashier of the Bank of the Capitol in Albany, and Meigs & Greenleaf, brokers in New York, for $1,025, including brokerage, which I paid for in cash, and pledged the bonds as collateral to my note at the Bank of the Capitol.

341 To the twentieth interrogatory he saith: No third mortgage bonds were ever held by any person, firm or corporation in trust for me, express or implied at any time, either prior to, or after the foreclosure.

To the twenty-first interrogatory he saith: I have already answered this interrogatory under my response to the eleventh interrogatory. That act was, I think, passed nearly in the form in which it was drafted by Mr. Ryan. Some slight amendment was made, I believe, by one of the committee in the legislature.

To the twenty-second interrogatory he saith: Said act is chapter 10 of the General Laws of the State of Wisconsin, passed in A. D. 1859, and is entitled "An act supplemental to chapter 79 of the Revised Statutes, entitled 'of Railroads.'"

To the last interrogatory he saith: I do not now recollect of anything.

WILLIAM BARNES.

JAS. G. JENKINS,
R. J. HILTON, *Commissioners.*

342 To the first cross-interrogatory he saith: My personal knowledge of the disposition of the bonds is somewhat limited. I know, of course, the amount of bonds received by myself, and know that $80,000 in bonds was delivered to Mr. Sage, and there may be other cases of which I was personally cognizant, but I do not call to mind any other cases. On my information and belief I can say that the whole two million dollars of said bonds were disposed of as particularly detailed in the affidavits to dissolve the injunction in the case of George Morgan, Edwin Townsend, and others *vs.* the La Crosse and Milwaukee Railroad Company, before Judge Sloan, and particularly in the affidavits of Hon. M. P. Stanton, president, and others, on the motion to dissolve the injunction in the case of Newcomb Cleveland against the La Crosse and Milwaukee Railroad Co. and others.

To the second cross-interrogatory he saith: I have already stated in answer to the nineteenth direct interrogatory the extent of my interest in said third mortgage bond before the foreclosure; this interest was an absolute interest in ten thousand dollars of said bonds and a contingent interest in $20,000 of said bonds. After the foreclosure and on the 13th day of December, 1859, I became the owner of fifty thousand dollars of the stock of the Milwaukee and Minnesota Rail-

road Company under the circumstances and conditions detailed in my answer to the nineteenth cross-interrogatory. These amounts constitute the only interest I ever held in the third mortgage bonds or in the stock of the new organization. I have sold all my stock some time since, realizing for the same at the rate of about four cents on a dollar.

343 To the third cross-interrogatory he saith: I was not personally cognizant of my own knowledge that a large floating debt had accumulated for rolling stock and materials furnished and provided and labor performed for the La Crosse and Milwaukee Railroad Company, and that the same remained unpaid and unsecured by any mortgages or other security upon the road or other property of said company, and that a large number of persons along the line of the road in Wisconsin had mortgaged their farms to the company to aid in the construction of said road, and that said farm mortgages had been used by the company with the stipulation on its part to pay the interest accruing thereon, and that a failure to pay such interest would produce great distress among the farm mortgage stockholders, and that it was necessary that immediate provision should be made for paying off such floating debt of the company, and for the payment of the accrued and accruing interest on such farm mortgages, and the other just indebtedness of the company, and providing for taking up and cancelling said farm mortgages, when deemed expedient, as recited in said preamble. I did, however, make inquiry as to the truth or falsity of the facts stated in said preamble by the perusal and examination of such reports and documents as I could obtain relating to the officers of the company and by information obtained from individuals. From the examination made, I had no reason to doubt, and did not in fact doubt or suspect in any manner the truth of the facts recited in the preamble. If I had doubted or suspected the truth of the facts stated in such preamble, I should not have accepted the trustship. I had never travelled over the road itself, and did not until the excursion on the opening of the road through to La Crosse.

To the fourth cross-interrogatory he saith: The mode and manner of the foreclosure of said mortgage has already been detailed at length in answer to the eleventh interrogatory. I did meet with op-

344 position in the foreclosure. The persons procuring injunctions were George Morgan, Edwin Townsend, and others, in the Wisconsin circuit court, Dodge county, argued before Judge Sloan, at West Bend. I think Mr. Edwin Lichfield, of New York, procured one also. One of the injunctions was procured before Judge Orton in a distant part of the State. They were either dissolved on argument or withdrawn after full preparation had been made for argument on the part of the trustee. Mr. M. H. Carpenter was one of the most active and energetic opponents that I encountered in the foreclosure; in my opinion he exerted all his acknowledged abilities to the full extent of their power to prevent the consummation of the foreclosure, but he was unable to prevent it, for the reason, as I suppose, that no sufficient cause in fact existed to defeat the foreclosure of the mortgage.

To the fifth cross-interrogatory he saith: After the dissolution of

the temporary injunction and the refusal of the court to grant a permanent injunction restraining the sale during the pendency of the action in the case of George Morgan, Edward Townsend and others, the further prosecution of that suit was, I supposed, deemed fruitless by the plaintiffs, as it would not prevent a sale, and the decision of Judge Sloan was indirectly a decision on the merits of the case, and the suit was withdrawn or settled or agreed to be settled according to my best recollection.

To the sixth cross-interrogatory he saith: Mr. E. G. Ryan made out the affidavits of said sale and the affidavits were left with him to file or record according to the statute and usage in such cases.

345 To the seventh cross-interrogatory he saith: I was somewhat excited on the day of the sale. Judging from the past, I was apprehensive that perhaps other injunctions might be issued and served on joining the sale. It was very aggravating and annoying after having travelled about one thousand miles several times to make the sale to have an injunction granted in a distant part of the State and served a few moments or hours before the sale, too late to make an application for its dissolution before the appointed time, thus necessitating an adjournment of the sale. I did not in the most hurried and rapid manner read the notice of sale and putting up the property. I do not think the notice was read any faster than is usual in auction sales in this city or in the city of New York. According to my best recollection and judgment I was from ten to fifteen or twenty minutes in reading the notice of sale and crying the property. I did not anticipate any cash bid as against the trustee under the act of the legislature, and I had already sworn to my intention to bid under the act in my affidavit on the motion to show cause before Judge Sloan in the Townsend suit. I never knew or heard of any individual who desired to make a cash bid at the sale.

To the eighth cross-interrogatory he saith: The property was bid in by the trustee in trust for the bondholders under the act of the legislature of Wisconsin procured to be passed by the trustee at the session of 1859, as per copy of the bid in writing hereto annexed, marked Exhibit F. The bid was not to be paid, but was made in trust for the bondholders, under the provisions of said act, at seventy-five per cent. of the amount estimated to be outstanding on the mortgage from the best information and counsel in my power to obtain. No money was paid on said bid.

347 To the ninth cross-interrogatory he saith: After I made said sale, according to my best recollection, I went to my hotel. From the time I made said sale until I left Milwaukee I was at my hotel, (the Newhall House,) with my wife, in the usual manner of being at a hotel, going out and in as usual, visiting Mr. Ryan's office to attend to business, making and receiving calls of both ladies and gentlemen with my wife. My recollection is that we called at Colonel Walker's, General King's and at Mr. Martin's, and that Colonel and Mrs. Walker, Mr. Cramer, and Mrs. Martin and others called on us. I did not keep my apartments locked and keep myself secluded the greater or any part of the said time. I do not recollect with certainty whether

my room was changed; if it was changed, such change had no reference to the sale or anything connected with it, but must have been made for my wife's accommodation. The previous questions under the ninth cross-interrogatory, I must be permitted to say, are discourteous, outrageous, and insulting, and evince a disposition to take an unprofessional advantage of the shield of a court of justice for an illicit opportunity to offer a gratuitous insult to a man, at least equally honorable and honest as the interrogator and his instigators. The papers which I executed on the sale were drawn up by Mr. Ryan, I suppose at his office. I think he had a draft which I drew up, but which he altered according to his own judgment and discretion. The papers were partially prepared before the sale. My recollection is that I signed the papers in Mr. Ryan's office, with the bondholders, joining in the new organization, on Monday, the 23d day of May, 1859. My copy of the papers has been borrowed by Mr. Sage and not returned to me according to agreement, and I cannot therefore refresh my recollection by reference to them. The bondholders—most of them—signed the papers in Mr. Ryan's office. I think the inner door of his office was locked a part of the time to pre-
348 vent interruption, which is an ordinary occurrence. My best recollection is that I signed the papers at Mr. Ryan's office on Monday morning, the 23d day of May, at the time the others signed. I can't state whether or not the door was locked at the particular time when I signed the papers. I desired to retain the title in my name as trustee until all my fees and Mr. Ryan's charges were adjusted and paid. I think the papers were not ready for signing until Monday morning, the 23d day of May, 1859. They should have been and doubtless were partially prepared in advance.

To the tenth cross-interrogatory he saith: I did not after said sale lock my doors or take any other means to prevent the service of an injunction or other papers. I never knew or heard that any injunction was issued. If there had been one issued, abundant opportunity was afforded for the service of the same. I have already given my best recollection as to the time, place, and manner of transferring and signing the papers. They were not signed and transferred secretly and with locked doors for the express purpose of avoiding the service of an injunction or other purpose, so far as I was concerned.

To the eleventh cross-interrogatory he saith: In case of a sale by advertisement under the power of sale and bidding in by the trustee under the act passed for the purpose by the legislature, no consent of any of the bondholders to take stock for their bonds was deemed necessary. In case of a cash sale, it was considered that a bondholder could at his option demand his proportionate share of the proceeds, and vice versa, that a cash purchaser could refuse to allow any bondholder to share in the stock of a new organization. I cannot state how many bondholders signed consent to take stock in lieu of cash.

I think Mr. Sage had these consents. These consents were all unnecessary, as the trustee in the exercise of his discretion bid in the property under said act.

349 To the twelfth cross-interrogatory he saith: Prior to my leaving Milwaukee, and after the said sale, a person unknown to me called at my room, giving his name, as I recollect, as Henry S. Lee, and asked for the share alleged to be coming to him on the sale on account of his bonds.

To the thirteenth cross-interrogatory he saith: I do not recollect the time of day I left Milwaukee. There was no special occasion or reason for leaving at the time I did leave. I intended to leave Milwaukee and had formed the purpose to start as soon as my business was completed, which I expected would be on Monday, the 23d day of May. I waited over several days, however, and until Friday, the 27th day of May, as appears by my hotel bill, expecting affidavits of publication from New York city, and the affidavits not arriving, I went to Chicago with my wife to visit a relation. I do not recollect borrowing any money at the time I left, although I might have done so, as my stay at Milwaukee was protracted beyond my expectations, and I failed to get money of Mr. Sage as I anticipated.

To the fourteenth cross-interrogatory he saith: From the litigious character of certain person I did not know but that other suits might be commenced. If anybody wished to commence any suit, however, abundance of opportunity was afforded for the service of the process for several days. I do not recollect that I had been threatened with any suit after the foreclosure by any person. The assumption in the fourteenth cross-interrogatory that I hurriedly left the city of Milwaukee is false and untrue. Since the foreclosure I have visited the city of Milwaukee on business several times. I was there in July, August, September, and November, 1859. I was there at the
350 Newhall House for two or three days in July, 1859, leaving, as appears by the hotel bill, on the 29th day of July, 1859. I was there at the same hotel for two or three days in August, 1859, leaving, as appears by the hotel bill on the 18th day of August, 1859. I was there at the same hotel in November, 1859, remaining nine days, and leaving on the 28th day of November, 1859, as appears by my hotel bill. I was also in Milwaukee on the 22d day of September, 1859, at the circuit court, in order to attend the Ryan suit, but I do not find my hotel bill and cannot state how long I was there or the day I left the city. I reached home in Albany on Sunday, the 26th day of September, 1859, and presume I stayed in Milwaukee for two or three days. On all of these occasions I was accessible to calls from any person on business or pleasure.

To the fifteenth cross-interrogatory he saith: I advised and consulted as to the sale and foreclosure of said mortgage principally with E. G. Ryan, and relied more on his judgment and opinion than that of any other person. The bondholders that I consulted with principally were Russell Sage, Alexander Mitchell, and Horatio G. Gilbert. After the first injunction was served and charges of fraud and dishonesty were made against the directors and officers, I consulted and advised with them in assisting to draw the affidavits negativing such charges and inuendoes. I do not recollect of hearing that any of the officers or directors ever expressed disapprobation of the foreclosure,

except that I understood that complaint was made at my taking possession so soon after default, and without consulting the directors and officers. On and after the 8th day of March, 1859, the board surrendered to the trustee, as will be seen from copy of resolutions hereto annexed, marked Exhibit G. I did consult with N. P. Stanton, A. C. Gunnison, and other directors of the company, (and with S. H. Alden, I think, although I find no draft affidavit of his in the Townsend suit,) about the foreclosure of the mortgage as above stated.

351 To the sixteenth cross-interrogatory he saith: I cannot say, of my own personal knowledge, that I knew at the time of the sale under the mortgage that any of the directors of the La Crosse and Milwaukee Railroad Company were interested in said third mortgage bonds. As I have heretofore stated, I do not recollect any bondholders who were such to any personal knowledge, except Mr. Russell Sage, to whom I knew the bonds were delivered, and myself. From the affidavits filed to dissolve the injunctions, and from common report and otherwise, I understood that some of the directors had more or less interest in the third mortgage bonds, viz., Mr. Noxen, Mr. McGregor, Mr. Luther, and Mr. Gunnison.

To the seventeenth cross-interrogatory he saith: I cannot state, from my own personal knowledge, that I knew the fact that said directors or any of them did, at the time of the sale, have an interest in said third mortgage bonds.

To the eighteenth cross-interrogatory he saith: I do not recollect ever being advised by any party to settle with Townsend, or advising any party to settle with him. If any settlements were to be made with parties, I did not consider that I had any power to make them. Mr. Sage, as a large bondholder and as agent and attorney for several bondholders, was acting independently of me for himself and them, and was not under my control or direction, and had the power to act as he deemed expedient and proper. All settlements were made under his and not my control or direction.

To the nineteenth cross-interrogatory he saith: After the sale under the mortgage, and the bidding in by the trustee in trust for the bondholders under the act of the legislature, I was desirous of retaining the title in my own name, until my fees and charges

352 and those of Mr. Ryan were adjusted and paid, and had drawn up proposed organization papers and a charter on this basis, but Mr. Ryan and Mr. Sage advised against this course, and thought the conveyance from me to the new organization should be embodied in the organization papers. After some consultation, I finally acceded to this advice and the wishes of Mr. Sage, and consented to carry in the instrument of organization, and appointed a board of directors selected and approved by him, on the faith of an agreement on the part of Mr. Sage, to refer the amount of my fees, charges, and expenses to the arbitration of either Hon. John L. Schoolcraft, of Albany, or Hon. Greene C. Bronson, of New York, and that Mr Ryan's fees were to be adjusted, and that an assessment should be levied on the stockholders of the new organization and collected immediately, in order to pay Mr. Ryan and myself.

A resolution was passed by the new board on the 23d day of May, 1859, making the reference to Mr. Schoolcraft or Mr. Bronson. After some considerable delay Mr. Sage selected Mr. John L. Schoolcraft as the arbitrator instead of Judge Bronson, and July 5th, 1859, Mr. Sage and myself appeared before the arbitrator and had a hearing of my claim, and the matter was submitted to Mr. Schoolcraft for his decision in the premises, but before his award was made Mr. Sage went to Milwaukee, and illegally and unjustly procured a repeal of the resolution submitting my claim to Mr. Schoolcraft. This resolution of repeal was passed July 21st, 1859, as appears by a certified copy in my possession. Mr. Sage then neglected and refused to take any further action on my claim, alleging as an excuse that Mr. Ryan had refused to adjust his claim and had commenced a suit nominally against me for the collection thereof, but which was defended by Mr. Sage and the new corporation. Matters rested in this way for some time. I went to Milwaukee at my own expense to endeavor to effect some settlement between Mr. Ryan and the company or some agreement to refer the matter to arbitration. All my efforts in the matter proved fruitless and abortive, and the case was tried at the circuit in Milwaukee in November, and a verdict rendered for $7,000. I attended the trial at my own expense, at the request of Mr. Sage, and made also three other journeys to Milwaukee on this business at my own expense. Mr. Sage appealed the case, and Mr. Ryan commenced a suit in equity for a receiver to collect the assessment and apply the same on his judgment.

In this suit Mr. Ryan alleged that his claim on the assess-
353 ment was entitled to priority over my claim as trustee. I thought it only fair and right that he should share it with me pro rata, but he declined to do so. In order to facilitate the settlement of the Ryan suit by Mr. Sage, and the application of all the funds collected on the assessment to the payment of Mr. Ryan's judgment, on the 13th day of December, 1859, I agreed to take of Mr. Sage $50,000 of stock of the new company for my individual services as trustee in the foreclosure of the third mortgage, on condition that he should settle up the Ryan judgment and have the same discharged and satisfied of record. Mr. Sage, after some delay, in May, 1860, settled with Mr. Ryan for $6,500, using the assessment to this purpose, but instead of procuring the judgment to be discharged, he took a power of attorney from Mr. Ryan, in order, as he stated, to use the suit in equity, and the receivership to aid him in the collection of the assessment. Mr. Sage has repeatedly asseverated to me on various occasions that the Ryan judgment should not be collected or used against me in any manner, but he refuses to give this stipulation in writing or to discharge the judgment of record. I am not disposed to believe that he ever intends to make any fraudulent and illegal attempt to collect the said judgment or part thereof of me personally, but I think that he retains it in its present position unnecessarily, arbitrarily, and in bad faith, for the futile purpose of endeavoring to exert an improper influence on my testimony and conduct in this and other cases.

I received for my services as trustee, in registering bonds, and for clerk hire and other expenses, the sum of $500 in cash, and $10,000 in bonds. These sums were paid in account for services and disbursements as trustee during tha year 1858. I also received the sum of $996 55 cash of the company, which was applied by me in the account I rendered to the company of $2,000 for services as trustee, and disbursements and clerk hire during the year 1858, up to December 22nd of that year. Crediting the bonds at five cents on the dollar, my account was thus paid up to December 22nd, 1858. I also received in 1858, as attorney and counsel in drawing the supplementary trust deed and otherwise, the sum of $500. About forty-four dollars were collected during the foreclosure, by virtue of an assessment made in the bondholders by the trustee, by a circular issued March 31st, 1859. Assessment made was one-fifth of one per cent. towards defraying the expense of the foreclosure, and only about forty-four dollars were realized. I cannot say whether the $200 assess-
354 ment on the bonds held by the Bank of the Capitol, as collateral to my note, was credited or paid in cash. The above sum constitute all the payments I received as trustee, from the acceptance of the trust to the date, and also all that I have received as attorney and counsel for the company, or in any other capacity. I received $1,000 from Mr. Sage, through Mr. H. G. Gilbert, to pay Mr. Ryan's draft on account for that amount, which was paid accordingly. I do not consider my claim for services as trustee settled or paid until the Ryan judgment is discharged of record, as was agreed at the time I consented to take the $50,000 in Milwaukee and Minnesota railroad stock. The third mortgage contained a covenant and agreement on the part of the company, similar to that contained in the land grant mortgage, that the said railroad company would from time to time pay all costs, expenses, and charges and compensation of the trustee, in, about, or for the execution of the trust, and that the said company would, in all things, keep deponent, himself, harmless of and from and against all costs and charges and expenses which deponent might sustain or be put to, in consequence of accepting said trust, or of anything which might be done or omitted under said deed of trust, saving only such damages as might arise from the culpable act or neglect of the trustee. The company, although requested by deponent, has neglected and failed to fulfil and perform the covenant. I have sold all my stock in the Milwaukee and Minnesota Railroad Company some two or three years ago, at the rate of about four cents on a dollar.

To the twentieth cross-interrogatory he saith: I do not recollect any other matter or thing of benefit or advantage to the parties to be responded to under the last general interrogatory. Ever since the first acceptance of my duties as trustee under the third mortgage, I have faithfully and honestly endeavored to fully discharge my duties to the best of my ability, regarding all interests and protecting them to the extent of my power, except my own personal interest in the collection of a proper sum for my expenses and services as
355 trustee, which I have neglected to attend to, as duty to my-

self and family required that I should have done. The amounts received by me will not probably cover actual disbursements, including my office and home expenses while I was engaged in my duties as trustee. I have endeavored on various occasions unnecessary here to enumerate, to effect a compromise and adjustment of the conflicting interests of this road, upon some reasonable and satisfactory basis, and have drawn up agreements and schemes, and attended various meetings for this purpose, which, after much negotiation, deliberation, and conversation, have finally failed, sometimes because one party was not satisfied and sometimes another party. These failures to compromise and adjust the interests of the various parties, have, in my opinion, resulted to the detriment and disadvantage of all interests as well as to the disadvantage of the public interests, and the annoyance and vexation of the courts of justice, where the spirit of litigation seems to render the controversies and cross-controversies unending and interminable.

I have taken time which belongs to the State, for the purpose of answering interrogatories and cross-interrogatories under the commissioner in this case, during the session of our legislature, and the preparation of my next report as superintendent of the insurance department, which throws a multiplicity of harassing and engrossing official duties upon my attention.

WILLIAM BARNES.

JAS. G. JENKINS,
R. J. HILTON, *Commissioners.*

Exhibit A.

ALBANY, *August 3d*, 1858.

Hon. M. P. Stanton, president, and Messrs. the board of directors of La Crosse and Milwaukee Railroad Company:

The trust deed executed by the La Crosse and Milwaukee Railroad Company to me, dated June 21st, 1858, for the purpose of securing the third mortgage sinking fund bonds, contains the following stipulation on the part of your company:

Third. Said railroad company covenants and agrees to and with said trustee and his successor, that said company will from time to time during the continuance of the trust, make, execute,
356 cause to be duly recorded and delivered to said trustee, all such further conveyances and assurances, and will do all such further acts and things as may either be necessary or proper, for more effectually vesting in said trustee all such right, title, and interest or estate, both legal and equitable, as said railroad company now has or may hereafter acquire of, in, or to all and every part of the property hereby conveyed or intended to be conveyed, together with the rights, liberties, privileges, and franchises aforesaid.

Said trust deed was, I suppose, intended to convey the whole line of all the railroad built or to be built by your company, or which they have a right to construct as a land grant road, or otherwise, under the laws of the State of Wisconsin, and also all the property, real

and personal and mixed, in possession or expectancy, and all the corporate and other rights, privileges, and franchises possessed by your company, or to be acquired or vested in future under any laws of the United States or of the State of Wisconsin.

The State of Wisconsin, as I understand from the late letter of Gov. Randall, does not desire, even if it had the right, to repeal the land grant act of 1856, although the road may not be completed from Madison and Columbus to Portage City by December, 1858, or on any other ground; but the people of Wisconsin do desire to have the land grant road constructed as soon as possible. If a sale should ever take place under the third mortgage, it would better serve the public interests, as thus expressed by the governor, to have such sale include all the rights, privileges, property, and franchises of the company, of whatever name or nature, as the purchasers on such sale would not be embarrassed by the unsecured indebtedness of the company, and could therefore, undoubtedly, complete the land grant road within the ten years fixed by the act of Congress.

The undersigned, as trustee under said deed of trust, feels that it is his duty in behalf of such persons as now are or may hereafter become bondholders under said third mortgage, to respectfully require of your company to execute to me a further conveyance and assurance in substantially the form of that hereto annexed, marked A, according to the terms of the stipulation and agreement made by your company with me, above recited.

Very respectfully yours,

WILLIAM BARNES, *Trustee.*

Exhibit A produced to us by the witness and by us annexed to his deposition as part thereof.

JAS. G. JENKINS,
R. J. HILTON, *Commissioners.*
WILLIAM BARNES.

357 *Exhibit B.*

Whereas a large floating debt has accumulated for rolling stock and materials furnished, road provided and labor performed for the La Crosse and Milwaukee Railroad Company, which remains unpaid and is unsecured by any mortgage or other security upon the road, or other property of said company; and whereas a large number of persons along the line of the road in Wisconsin have mortgaged their farms to the company to aid in the construction, which farm mortgages have been used by the company, with the stipulation on its part to pay the interest accruing thereon, and a failure to pay which interest would produce great distress among the farm mortgage stockholders; and whereas it is necessary that immediate provision be made for paying off such floating debt of the company, and for the payment of the accrued and accruing interest on such farm mortgages and the other just indebtedness of the company, and also to provide for taking up and cancelling said farm mortgages when deemed expedient: Therefore, Resolved that an issue of bonds of the said com-

pany be and is hereby authorized to the amount of 2,000,000, to be secured by a mortgage upon the entire line of the road from Milwaukee to La Crosse, including all depots, depot grounds, lots, buildings, stations, materials, line track, improvements of every kind, all rolling stock, cars, locomotives, and all real and personal property appertaining to the said line of railroad. Said bonds to be in the sums following: $1,000 bonds in sums of $500 each, and 1,500 bonds in sums of $1,000 each, payable in thirty years from date, bearing interest at the rate of seven per cent. per annum from the first day of July, 1858, payable semi-annually after one year, at the Albany Exchange Bank, in the city of Albany. The first payment of interest to be made on the first day of July, 1859. Said bonds to be printed in the usual form with coupons, and the mortgage securing the same to be executed by the president and secretary of said company to William Gould, of the city of Albany, trustee for said bondholders, and providing, in case of death, resignation, or removal of said trustee for the appointment of a successor on application to one of the justices of the supreme court of the State of New York; also a sinking fund to provide for the gradual payment of said bonds, viz: the sum of $25,000 annually, the first payment to be made on the first day of July, 1861. Said trustee shall, for the payment of the sinking fund, advertise for the purchase of said bonds by giving ten days' notice in New York, Albany, and Milwaukee newspapers. And said mortgage to be so executed subject to $922,000 outstanding bonds secured by a first mortgage upon the eastern division; also to Milwaukee city bonds $314,000; also $1,000,000, 2d mortgage, eastern division, $4,000,000 mortgage upon the line of said road from Portage City to La Crosse, and subject to the mortgage of about $200,000 on the road from Portage to La Crosse, from junction near village of Tomah to the terminus on lake or river St. Croix.

358 OFFICE OF THE LA C. & M. R. R. Co.,
Milwaukee, June 1st, 1858.

I hereby certify that the foregoing is a true copy of a resolution adopted by the board of directors of this company, in session this day.

LOCK L. DOTY, *Secretary.*

At a meeting of the directors of the La Crosse and Milwaukee Railroad Company, held at the office of the company in the city of Albany, on Tuesday, 15th day of June, 1858. Present: Messrs. Perry, vice-president; Luther, Shear, Guest, Radcliff. Absent: Messrs. Stanton, Smith, McGregor.

On motion of Mr. Luther,

Resolved, That the resolution adopted on the first day of June instant, at the office of the company in the city of Milwaukee, authorizing and directing the issue of bonds of the said company to the amount of $2,000,000, secured by a mortgage or trust deed, as stated in said resolution, be, and the same is hereby, amended as follows: said bonds to be in the sums following, viz: $1,000,000 in sums of

$1,000 each; $700,000 in sums of $500 each; $300,000 in sums of $100 each. And that said resolution be further amended by striking out the words "payable semi-annually after one year," and also the words "the first payment of interest to be made on the first day of July, 1859," so that the coupons shall be due and payable semi-annually from the first day of July, 1858.

Which resolution was adopted unanimously.

At a meeting of the directors of the La Crosse and Milwaukee Railroad Company held at the office of the company in the city of Albany, on Saturday, June 26th, 1858. Present: N. G. Stanton, president; C. W. Luther, A. Noxon, J. H. Shear, A. C. Gunnison.

On motion, A. C. Gunnison was appointed secretary pro tem.

On motion,

Resolved, That the preamble and resolution passed by the board of directors at the meeting held at the city of Milwaukee, June 1st instant, in reference to the issue of a 3d mortgage sinking fund bond to the amount of two millions ($2,000,000,) be amended by substituting the name of William Barnes as trustee in place of William Gould.

OFFICE OF THE LA CROSSE AND MILWAUKEE RAILROAD CO.,
480 *Broadway, Albany, N. Y.*

I hereby certify that the foregoing is a true copy of resolutions and proceedings of the board of directors in relation to mortgage to secure two millions dollars, as stated in said resolutions and proceedings.

In witness whereof, I have hereunto set my hand and affixed
359 the seal of the La Crosse and Milwaukee Railroad Company, this 6th day of July, 1858.

[SEAL.] D. V. N. RADCLIFF,
Assistant Secretary and Treasury at Albany.

Exhibit "B" produced to us by the witness, and by us annexed to his deposition as part thereof.

JAS. G. JENKINS,
R. J. HILTON, *Commissioners.*
WILLIAM BARNES.

Exhibit C.

Selah Chamberlain, esq.:

DEAR SIR: Please to take notice that by virtue of and under the provisions of a trust deed or mortgage executed to me by the La Crosse and Milwaukee Railroad Company, dated June 21st, 1858. and recorded in the office of the secretary of state of the State of Wisconsin, in book of railroad mortgages, on pages 342 to 348, inclusive, on the 8th day of July, 1858, and of a supplementary irust deed or mortgage executed to me by the said company, dated the 11th day of August, 1858, and recorded in the office of the secretary of state of the State of Wisconsin, in book of railroad mortgages, on pages 349 to 361, inclusive, on the 1st day of September, 1858, I hereby demand possession of all the property, real, personal, and

mixed, and of all fixtures and property of whatever nature, and of all the corporate and other rights, franchises and privileges, covered or conveyed, or intended to be covered or conveyed by said trust deed or mortgages, or either of them, which are wholly or in part in your use, control, or possession. Said original and supplementary trust deeds or mortgages are herewith exhibited to you, and copies of the same will be furnished for you if desired.

I hereby respectfully request from you an answer in writing to this demand.

Milwaukee, January 22d, 1859.

WILLIAM BARNES, *Trustee.*

Exhibit C produced to us by the witness and by us annexed to his deposition as part thereof.

JAS. G. JENKINS,
R. J. HILTON, *Commissioners.*
WILLIAM BARNES.

360 *Exhibit D.*

La Crosse and Milwaukee Railroad, S. Chamberlain, mortgagee in possession.

MILWAUKEE, WIS., *25th January*, 1859.

Wm. Barnes, Esq., trustee:

DEAR SIR: I received yours of the 22d inst., in which, as trustee named in certain trust deeds, you demand from me possession of all the property covered or conveyed by such deeds, and which is in my use, control, or possession.

I am not aware of having possession, custody, or control, or in any use, any property whatsoever covered, conveyed, or intended so to be, by such deeds, save what has come lawfully to my possession and control by contract with the La Crosse and Milwaukee Railroad Company, and I must decline to comply with your demand. I deem this reply sufficient, as you are fully aware of my prior rights in premises.

Yours, respectfully,

SELAH CHAMBERLAIN.

Exhibit D produced to us by the witness, and by us annexed to his deposition as part thereof.

JAS. G. JENKINS,
R. J. HILTON, *Commissioners.*
WILLIAM BARNES.

Schedule E.—Exhibit E.

Whereas under and by virtue of a trust deed or mortgage executed by the La Crosse and Wilwaukee Railroad Company to William Barnes, dated June 21st, 1858, and recorded in the office of the secretary of state of the State of Wisconsin, in book of railroad mortgages on pages

342 to 348, inclusive, on the 8th day of July, 1858, and of a supplemental trust deed or mortgage executed by the said company to said Barnes on the 11th day of August, A. D. 1858, and recorded in said office on the 1st day of September, 1858, in said book of railroad mortgages, pages 349 to 361, inclusive, it was provided in substance that in case default should at any time be made in the payment of the interest or principal on any of the outstanding bonds issued under said mortgages, then and in either of said cases said Barnes, on the written request of the holder or holders of bonds then outstanding to the amount, in the aggregate, of one hundred thousand dollars, should proceed to make the sales and conveyances of the property, real and personal and mixed, and of the rights, franchises, privileges, &c., covered and conveyed by said trust deeds or mortgages:

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Now, therefore, we, the undersigned, holders and owners of such outstanding bonds in the various sums set opposite our respected names, do hereby request William Barnes, the said trustee, to proceed and make such sales and conveyances as provided in said trust deeds or mortgages, either by advertisement or foreclosure by suit in such manner as he may deem expedient.

And we do hereby also request said Barnes to become the purchaser on said sale or sales in trust for the bondholders, at the sum of seventy-five per cent. of the amount of outstanding bonds and unpaid interest thereon, issued and registered under said trust deeds or mortgages, or at any such higher sum, not exceeding the full amount of all of said outstanding bonds and the unpaid interest thereon, in conformity to the provisions of the act passed by the legislature of Wisconsin, and approved by the governor on the 8th day February, A. D., 1859, entitled An act supplemental to chapter 79 of the revised statutes, entitled "of railroads."

And we, the undersigned, in consideration of the premises, do hereby severally promise and agree with said Barnes to pay him, and also to indemnify and save him harmless from all costs, charges, damages, and losses of whatever name or nature which he may incur or become liable for in prosecuting, making, or defending such foreclosure and sale, and the proceedings and steps incident or necessary thereto, in proportion to the amount of said bonds held by us respectively.

February 11th, 1859.

Names.	Amounts.
Russell Sage	$80,000
Alex. Mitchell	6,000
S. L. Rose	25,000
Wm. E. Cramer	7,500
C. Hawley, executor of the estate of J. W. Hawley	3,000
Cyrus Hawley	7,400
H. J. Nazro & Co	3,000
H. Ludington & Co	1,300
W. P. Lynde, administrator of the estate of C. K. Watkins	16,000

E. Cramer	$5,500
John Cramer, by E. Cramer his attorney	1,000
Joseph Cary	1,200
A. F. Sailflohn	800
Caswell & Gaylord	2,000
362 A. B. Van Cott	1,000
Chas. Schley	8,000
John S. Rockwell	22,000
Geo. F. Gray	20,000
J. M. Lovett	20,000
J. S. Rogers, pres Rogers's	7,000
L. D. Coman	14,000
A. Fleming	20,000
Geo. W. McLean	10,000
Tracy R. Edson	900
Keziel Wright	200
W. H. Peckham	10,000

Exhibit E produced to us by the witness and by us annexed to his deposition as part thereof.

JAS. G. JENKINS,
R. J. HILTON, *Commissioners.*
WILLIAM BARNES.

Exhibit F.

TRUSTEE'S OFFICE,
La Crosse and Milwaukee Railroad Co.

In pursuance of an act of the legislature of the State of Wisconsin, published February 10th, 1859, being chapter X, entitled an act supplemental to chapter 79 of the revised statutes, entitled "of railroads," which act was approved by the governor on the eighth day of February, 1859, and a copy of which act is hereto annexed, marked schedule A, I, William Barnes, trustee in certain trust and mortgage deeds executed to me by the La Crosse and Milwaukee Railroad Company, as mentioned in "Schedule B," do hereby bid for all the railroads, lands, fixtures, choses in action, rights, liberties, franchises, privileges, and property of whatsoever nature—real, personal and mixed—covered and conveyed, or intended to be covered and conveyed by said trust or mortgage deeds as particularly specified therein and advertised by me as trustee to be sold at the court-house. in the city of Milwaukee, on the twenty-sixth day of March, 1859, and adjourned to the twenty-third day of April, 1859, and again adjourned to the twenty-first day of May, 1856, at 12 o'clock m. of that day, at the same place, (a copy of which advertisement is hereto annexed, marked Schedule B,) an amount equal to seventy-five per cent. of the bonds or other obligations secured by said trust or mortgage deeds actually outstanding at the time of such sale, computed to be the sum of one million, five hundred and thirty-three dollars and thirty-three cents, ($1,593,333,333,)
363 in trust for the bondholders of such outstanding bonds or obligations in accordance with and in conformity to the provisions of said act of the legislature of the State of Wisconsin, a copy

of which is hereto annexed, marked Schedule A. I am not to incur any personal liability to pay the said bid, except the costs and expenses of sale.

Dated, Milwaukee, May 21st, 1859.

WILLIAM BARNES, *Trustee.*

Schedule A annexed to such bid is a copy of chapter X of the general laws of the State of Wisconsin for the year 1859.

Schedule B is a printed copy of the advertisement of sale, and the several adjournments thereof.

Exhibit F produced to us by the witness and by us annexed to his deposition as part thereof.

JAS. G. JENKINS,
R. J. HILTON, *Commissioners.*

Exhibit G.

William Barnes, esq.:

DEAR SIR: I herewith send you a copy of preambles and resolutions passed at a meeting of the directors of the La Crosse and Milwaukee Railroad Company, in the city of Albany, on the 8th day of March, 1859.

Whereas the La Crosse and Milwaukee Railroad Company, on the 21st day of June, A. D. 1858, duly executed and delivered to William Barnes, of the city of Albany, a trust deed or mortgage which was recorded in the office of secretary of state of the State of Wisconsin on the 8th day of July, 1858, in the book of railroad mortgages, in pages 342 to 348, inclusive, and said company also on the 11th day of August, A. D. 1858, duly executed and delivered to said Barnes a supplementary trust deed or mortgage, which was recorded in the office of secretary of State of the state of Wisconsin, in the book of railroad mortgages, on the 1st day of September, 1858, at pages 349 to 361 inclusive, for the purpose of securing the payment of bonds to be issued by said company to the amount of two millions, ($2,000,000,) with the interest warrants or coupons thereto attached, by which mortgage deeds it was provided that in case default should be made for the space of fifteen days in the payment of any of the interest warrants or coupons, as they respectfully fall due, it should be lawful for, and said trustee was authorized in his discretion, to enter into and upon and take possession of all and singular the railroads, and all the other property, real, personal and mixed, and choses in action conveyed or intended to be conveyed by said trust or mortgage deeds, and to take and to receive the income and profits thereof, and to take possession of all books, documents, maps, and papers relating
364 thereto, and to sell the same, &c., as by reference to said deeds will more particularly and at large appear.

And whereas, also, the interest warrants or coupons issued by said company, attached to said bonds, which became due on the 1st day of January, 1859, have not been paid, and default on the payment of the same has been made for the space of fifteen days.

And whereas the said company has been and still is unable to provide funds for the payment of said interest coupons, and said trustee

claims possession as aforesaid, under and by virtue of the covenants and provisions of said trust deed.

And whereas proceedings have been commenced or are about being commenced, and steps have been taken for the foreclosure of the second mortgage in the eastern division on account of a default in the payment of the interest due March 1st, and in the land grant mortgages on the western division on account of default in the payment of interest during the past year, and the said company being utterly unable to furnish funds to discharge the interest coupons due and accruing in said mortgages.

And whereas, also, by the reports of the "lessee" to this company, it appears that the amount of his judgment and claims have been increased instead of diminished during the past year: Therefore,

Resolved, That the said La Crosse and Milwaukee Railroad Company, in conformity with and according to the provisions of said deeds, does hereby surrender and deliver over to said William Barnes, trustee as aforesaid, possession of all and singular the railroads, and all the other property, real, personal and mixed, and the choses in action covered and conveyed, or intended to be covered and conveyed by said trust or mortgage deeds, and of all the books, documents, maps, and papers relating thereto, with all the rights, liberties and privileges and franchises of said railroad company, to which said trustee is entitled under and by virtue of said trust and mortgage deeds. And that a copy of this resolution be delivered to said trustee.

Albany, 8th March 1859.

A. C. GUNNISON, *Sec'y pro tem.*

Exhibit G produced to us by the witness, and by us annexed to his deposition as part thereof.

JAS. G. JENKINS,
R. J. HILTON, *Commissioners.*
WILLIAM BARNES.

365 Circuit court of the United States for the district of Wisconsin, in equity.

FREDERICK P. JAMES *et als.*
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company and others.

The respective parties hereby stipulate that Exhibit No. 1 hereto attached, being a copy of the articles of organization of the Milwaukee and Minnesota Railroad Company, may be read in evidence on the hearing of this cause with the same effect as though the original were produced and duly verified before the examiner and introduced in evidence, the complainant saving all right of objection thereto that might or could have been taken to such original if duly presented, proved, and offered in evidence.

MATT H. CARPENTER, *Sol. for Def't.*

Dated May 15, 1865.

And that it was duly recorded in secretary state's office, as per copy of certificate printed thereon.

FINCHES, LYNDE & MILLER,
Sol'rs for Compl'ts.

366 *Exhibit No.* 1.—*Articles of organization of the Milwaukee and Minnesota Railroad Company.*

Whereas the La Crosse and Milwaukee Railroad Company, a corporation duly constituted by the laws of the State Wisconsin, on the twenty-first day of June, A. D. 1858, duly executed to William Barnes a mortgage deed, for the purpose of securing the payment of bonds to the amount of two millions of dollars, with the interest coupons attached, which was recorded in the office of the secretary of state of the State of Wisconsin in the book of railroad mortgages, on pages 342 to 348, inclusive, on the 8th day of July, A. D. 1858.

And whereas, also, the said La Crosse and Milwaukee Railroad Company, on the eleventh day of August, A. D. 1858, duly executed to the said Barnes a supplementary mortgage, or trust deed, for the purposes aforesaid, which was recorded in the office of the secretary of state of the State of Wisconsin in the book of railroad mortgages, on pages 349 to 361, inclusive, on the first day of September, A. D. 1858, whereby all and singular the railroad of said company commencing in the city of Milwaukee, and running from thence to La Crosse, in said State, a distance of about two hundred miles, constructed and to be constructed; and also all the railroad of said company commencing in the village of Madison, in said State, and running from thence, by the way of Portage City, to the St. Croix river or lake, in said State, a distance of about two hundred and sixty-eight miles, constructed and to be constructed; and also all the railroad of said company commencing in the village of Columbus, in said State, and running from thence to Portage City, in said State, a distance of about forty miles, constructed and to be constructed, and all other railroads built and to be built and constructed by said company, or which they have a right to construct, by or under any corporate or other rights, privileges, or franchises granted or given to said company by the legislature of the State of Wisconsin, or from any
367 other source, or in any other manner whatever, including all and singular the several tracts, pieces, or parcels of land which constituted, or might thereafter constitute, the site of the roadways, turnouts, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which constituted, or might thereafter constitute, or be a part of, or appertain to said railroads, and including, also, all and singular the lots, land, and real estate whatsoever, which the said company owned or might thereafter acquire by purchase, grant, gift or otherwise, in the cities of Milwaukee and La Crosse, or in the vicinity of either of said cities, and all improvements made, or thereafter to be made, thereon; and all rights of dockage and wharfage, and all other riparian rights, and privileges, and franchises appertaining thereto, as particularly described in the various deeds of the same to said company; and also all and singular the

superstructure of said railroads, whether then made and constructed or thereafter to be constructed, and all the engine-houses, workshops, depotsa nd other buildings, and all the other improvements on or appertaining to said railroads built, or thereafter to be built and constructed; and also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description procured, or thereafter to be procured, for or used in said railroads, and all the materials, tools, implements, and utensils, and other personal property procured, or thereafter to be procured, for or used in connection with said railroads; and also and singular the rights, liberties, privileges, and franchises of said La Crosse and Milwaukee Railroad Company, of every kind and description; and also all and singular the lands granted, or intended to be granted, to said La Crosse and Milwaukee Railroad Company, under or by virtue of the act of Congress approved June 3d, 1856, entitled "An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State," and the act of the legislature of the State of Wisconsin, approved October 11th, 1856, entitled "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust created by an act of Congress, entitled 'An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State,' approved June 3d, 1856," together with all and singular the hereditaments and appurtenances belonging to, or in anywise appertaining to, the said lands; and also all and singular the bonds, bills of exchange, promissory notes, accounts, causes of action, demands and choses in action, of whatsoever nature, owned wholly or in part by said railroad company on such day as the said railroad company might first make default
368 in the payment of the principal or interest which might thereafter become due on any of the said bonds issued by said company under said trust deeds or mortgages, and all the property, real, personal, and mixed, of said railroad company, then acquired and vested, or thereafter to be acquired and vested, together with all the rights, liberties, privileges, and franchises of said railroad company, as fully and amply as if said railroads had been entirely built, constructed, and equipped, and the particular lands granted by the foregoing acts of Congress and the legislature of the State of Wisconsin, fully designated and duly patented and conveyed to said railroad company according to the provisions of the said acts, were conveyed to said Barnes, to be held by him in trust for and as security to the bondholders of said company for the payment of the said bonds, with the interest thereon secured by said mortgage deeds.

And whereas by said trust or mortgage deeds it was provided that if said railroad company should make default for the space of fifteen days in the payment of any of the interest warrants or coupons accompanying the said bonds, as they respectively became due, or if default for the like period should be made in the payment at maturity of the principal sum of money mentioned in any of the said bonds secured by said mortgage deeds, then, and in either of said cases, the said Barnes as trustee was authorized, in his discretion, to enter into and take possession of all and singular the railroads and all

the other property, real, personal, and mixed, covered or conveyed, or intended to be covered or conveyed by said trust deeds, with all the rights, liberties, privileges, and franchises of said company, and to take and secure the income and profits thereof, and to sell all and singular said railroads and said other property, real, personal, and mixed, with all the rights, liberties, privileges, and franchises of said railroad company, covered or conveyed, or intended to be covered or conveyed by said mortgage deeds, either at public or private sale; and, also, that on the written request of the holder or holders of said bonds then outstanding to the amount, in the aggregate, of one hundred thousand dollars, he should proceed to make such sales and conveyances for the purpose of paying the outstanding bonds and the interest thereon; but in case of any sale at auction, it was provided that notice of such intended sale should be published once in each week, for three weeks at the least, in two newspapers published in the city of New York, and in a newspaper published in the city of Milwaukee; and that on such sale the said Barnes should execute and deliver to the purchaser or purchasers deeds and conveyances, which should vest in such purchaser or purchasers all the estate,
369 right, title, and interest, whether legal or equitable, of the undersigned trustee and said railroad company of, in, and to the said property, rights, liberties, privileges, and franchises, and every part and parcel thereof.

And whereas the interest which became due on the first day of January, A. D. 1859, upon the bonds issued by said company, secured by the mortgage deeds aforesaid, amounting to about the sum of seventy thousand dollars, was paid not by said company when it became due, and said company having made default in such payment for the space of more than fifteen days; and whereas, also, holders of said outstanding bonds, amounting in the aggregate to the sum of over one hundred thousand dollars, have duly requested in writing, in compliance with said mortgage deeds, that the said trustees should proceed to make such sale and conveyances as aforesaid.

And whereas, also, the said trustee, in conformity to the provisions of said trust or mortgage deeds, has duly published notice of such intended sale once in each week for three weeks in two newspapers published in the city of New York, and in a newspaper published in the city of Milwaukee, in the State of Wisconsin, which notice of sale was given for the twenty-sixth day of March, A. D. 1859, at the court-house, in the city of Milwaukee, at twelve o'clock noon of that day.

And whereas said sale was on the said twenty-sixth day of March, A. D. 1859, duly adjourned and postponed to the twenty-third day of April, A. D. 1859, at twelve o'clock noon of said day, at the same place, which adjournment was duly advertised once in each week for three weeks in said newspapers; and whereas said sale was again, on the said twenty-third day of April, A. D. 1859, duly adjourned to the twenty-first day of May, A. D. 1859, at twelve o'clock noon of that day, at the same place, which last adjournment was duly advertised once in each week for three weeks in said newspapers.

And whereas the said sale was on said last-mentioned day duly made as provided in said trust or mortgage deeds, and William Barnes, the said trustee, became the successful bidder and purchaser at such sale in trust for the bondholders, in conformity to the laws of the State of Wisconsin and the provisions of an act approved by the governor of said State on the ninth day of February, A. D. 1859, entitled "An act supplemental to chapter seventy-nine of the Revised Statutes, entitled 'of railroads,' for the price or sum of one million five hundred and ninety-three thousand three hundred and thirty-three dollars and thirty-three cents, being seventy-five per cent. of the
370 amount due for principal and interest on the bonds outstanding and secured by said deeds, or thereabouts, be the same more or less; he, the said William Barnes, trustee as aforesaid, being the highest and best bidder at such sale:

Now, therefore, this indenture witnesseth, that the said William Barnes, purchaser as aforesaid, does hereby acknowledge, testify, and declare that his title acquired by the said purchase to the railroads, appurtenances, franchises, and property, particularly described in the mortgage or trust deeds to him executed by the said La Crosse and Milwaukee Railroad Company, as above recited, was taken and is held by him in trust for the holders of the bonds secured by the said mortgage or trust deeds.

And the said William Barnes, as such purchaser in trust as aforesaid, and the holders of said bonds who execute these presents, associates of the said William Barnes, do hereby, in pursuance of the statute in that case made and provided, proceed to organize anew and elect directors, and provide for the distribution and disposal of stock under the name hereafter mentioned in that behalf, and the charter of the said La Crosse and Milwaukee Railroad Company, with the variations in manner and form of organization required by their altered circumstances and better convenience, and for that purpose do hereby adopt and establish the following articles of organization:

ARTICLE ONE. For the purposes aforesaid, the parties hereto do hereby organize themselves anew as a corporation or body corporate under the name of the Milwaukee and Minnesota Railroad Company, by the corporate name to have, possess, exercise, and enjoy all the corporate or other rights, powers, privileges, and franchises granted to or conferred upon the La Crosse and Milwaukee Railroad Company aforesaid, by the several acts of the legislature of the State of Wisconsin following, to wit: An act to incorporate the La Crosse and Milwaukee Railroad Company, approved on the second day of April, 1852; and all acts of the said legislature amendatory of or supplemental to the said act, and all other acts of the said legislature now in force relating to or binding upon the said La Crosse and Milwaukee Railroad Company, and particularly "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust created by an act of Congress entitled "An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State," approved June 3, 1856, which said last-mentioned act of the said legislature, was approved on the

371 eleventh day of October, A. D. 1856; and all acts amendatory or supplemental to said last-mentioned act, and by chapter seventy-nine of the Revised Statutes of the said State, entitled "of railroads," and every other general law of the said State in that behalf made and provided; subject to all duties, restraints, and liabilities created or imposed by law upon the said La Crosse and Milwaukee Railroad Company, and upon railroads in the said State generally, so far the same may be applicable.

ARTICLE TWO. The said William Barnes, for and in consideration of the premises above cited, doth hereby grant, bargain, sell, convey, transfer, assign, set over, and confirm unto the said Milwaukee and Minnesota Railroad Company all and singular the railroads, appurtenances, franchises, and property, real and personal, rights and choses in action of whatever name or description herein above mentioned, and more particularly described in the above-mentioned mortgages or trust deeds, as fully as if the same were herein particularly set forth and described, and all the right, title, and interest of him, the said William Barnes, therein or thereto vested in him by the said mortgages or trust deeds, and by the said sale and purchase thereunder, to have and to hold the same unto the said Milwaukee and Minnesota Railroad Company, their successors and assigns, for their sole use forever.

ARTICLE THREE. The capital stock of the said Milwaukee and Minnesota Railroad Company is hereby fixed at the sum of "two and a half million of dollars," divided into twenty-five thousand shares of one hundred dollars each, with liberty, nevertheless, to the said Milwaukee and Minnesota Railroad Company to increase the said capital stock, under and in conformity to the laws of the said State, to a sum not exceding five millions of dollars.

ARTICLE FOUR. The stockholders of the said Milwaukee and Minnesota Railroad Company are the holders of the said bonds, secured by the said mortgages or trust deeds, for whose benefit the said sale and purchase was made by the said William Barnes, and such other persons as shall hereafter associate themselves with them by subscription to the said capital stock or other proper means.

Each holder of the said bonds, upon surrendering his bonds to the proper officer of the said Milwaukee and Minnesota Railroad Company, shall be entitled to receive a certificate of stock in the company hereby organized of an equal amount with the principal of the bonds so surrendered by him, subject, nevertheless, to the payment in money of the pro rata share of the costs, charges, and expenses
372 of the said sale and of this organization, and of carrying the same into effect, being the proportion of the whole of such costs, charges, and expenses as the amount of stock so to be issued shall bear to two millions of dollars.

ARTICLE FIVE. The payment of the said pro rata share of such costs, charges, and expenses is hereby declared to be a charge and lien upon the stock to which each holder of the said bond is entitled; and the board of directors of the said Milwaukee and Minnesota Railroad Company shall have power to declare the right to such stock

forfeited by the non-payment of such pro rata share of such costs charges, and expenses, in such manner as the said board of directors shall determine.

ARTICLE SIX. The board of directors of the said Milwaukee and Minnesota Railroad Company shall consist of nine persons, and the following persons are hereby appointed and elected directors of the said company, and shall constitute the first board of directors of the said Milwaukee and Minnesota Railroad Company, and shall hold their offices as such until the last Wednesday of May next, (1859,) and thereafter until their successors are duly elected in their place: Russell Sage and Ludlow A. Battershall, of Troy, New York; William Gould, of Albany, New York; William B. Gilbert, of Syracuse, New York; Hans Crocker, Norman J. Emmons, and Lemuel W. Weeks, of Milwaukee, Wisconsin; William R. Sill, of La Crosse, Wisconsin; and William E. Smith, of Fox Lake, Wisconsin.

The directors hereafter to be elected shall be so elected in pursuance of the provisions of law regulating the election of directors of the said La Crosse and Milwaukee Railroad Company.

ARTICLE SEVEN. The said board of directors shall meet at the office of the said Milwaukee and Minnesota Railroad Company on this day, and proceed to elect and appoint the officers of the said Milwaukee and Minnesota Railroad Company, and provide for a corporate seal.

ARTICLE EIGHT. These articles are executed in duplicate, both duplicates executed by the said William Barnes, and by the holders of a majority the said bonds, setting opposite to their names and seals the amount of bonds respectively held by them. When one of the said duplicates shall have executed by the holders of a majority of said bonds it shall be sent for record to the office of the secretary of state of the said State, and the other duplicate shall be retained in the office of the said Milwaukee and Minnesota Railroad Company for further execution by the holders of said bonds, and when so further executed, may be in like manner recorded in the office of the said secretary of state.

373 ARTICLE NINE. The organization of the Milwaukee and Minnesota Railroad Company is hereby declared to be complete in fact.

In witness whereof, the said William Barnes and the bondholders whose names are under written, have hereto set their hands and seals at the city of Milwaukee, in the State of Wisconsin, on the twenty-third day of May, in the year one thousand eight hundred and fifty-nine.

WILLIAM BARNES. [SEAL.]

Russell Sage,	$80,000	[L. S.]
L. D. Coman, by Russell Sage, his att'y	24,000	[L. S.]
L. A. Battershall, by Russell Sage, his att'y	50,000	[L. S.]
R. Pardow, jr., by Russell Sage, his att'y	20,000	[L. S.]
L. H. Buell, by Russell Sage, his att'y	18,000	[L. S.]
H. G. Gilbert, by Russell Sage, his att'y	50,000	[L. S.]
Roscius R. Kennedy, by Russel Sage, his att'y	75,000	[L. S.]

Alfred Noxon, by Russell Sage, his att'y	$17,000	[L. S.]
George F. Gray, by Russell Sage, his att'y	20,000	[L. S.]
J. M. Lovett, by Russell Sage, his att'y	50,000	[L. S.]
S. H. Alden, by Russell Sage, his att'y	30,000	[L. S.]
William Gould, by Russell Sage, his att'y	50,000	[L. S.]
J. F. Frost, by Russell Sage, his att'y	3,000	[L. S.]
William Watson, by Russell Sage, his att'y	56,500	[L. S.]
Eli King, by Russell Sage, his att'y	40,000	[L. S.]
J. Templeton, by Russell Sage, his att'y	5,000	[L. S.]
S. R. Foster, by Russell Sage, his att'y	20,000	[L. S.]
374 A. Fleming, by Russell Sage, his att'y	20,000	[L. S.]
George W. McLean, by Russell Sage, his att'y	10,000	[L. S.]
Stoddard Judd, trustee	544,950	[L. S.]
E. Cramer	5,500	[L. S.]
Ax. Mitchell	6,000	[L. S.]
C. Hawley	7,400	[L. S.]
William B. Gilbert	30,000	[L. S.]
John W. Davis	20,000	[L. S.]
William R. Sill	500	[SEAL.]
H. Crocker	500	[SEAL.]
R. S. Kneeland	3,800	[SEAL.]
H. H. Wheelock, by R. S. Kneeland, his att'y	1,900	[SEAL.]
John C. Denison, by R. S. Kneeland, his att'y	300	[SEAL.]
J. H. Wheelock, by R. S. Kneeland, his att'y	1000 00	[SEAL.]
H. Beckwith, by R. S. Kneeland, his att'y	300	[SEAL.]
Nathan Parker, by R. S. Kneeland, his att'y	200	[SEAL.]
F. Sassinguth, by R. S. Kneeland, his att'y	400	[SEAL.]
W. E. Smith	500	[SEAL.]
William Barnes	10,000	[L. S.]
E. G. Ryan	9,500	[SEAL.]
John S. Rockwell	22,000	[SEAL.]

Sealed and delivered in our presence by William Barnes, Russell Sage, L. D. Coman, L. A. Battershall, R. Pardow, jun'r, L. H. Buel, H. G. Gilbert, Rocius R. Kennedy, Alfred Noxon, George T. Gray, J. M. Lovett, S. H. Alden, William Gould, J. F. Frost, William Watson, Eli Kelley, J. Templeton, S. R. Foster, A. Fleming, and George W. McLean, by Russell Sage, their attorney; Stoddard Judd, E. Cramer, Alexander Mitchell, C. Hawley, W. B. Gilbert, John W. Davis, William R. Sill, H. Crocker, R. S. Kneeland, H. H. Wheelock, John C. Denison, J. H. Wheelock, H. Beckwith, Nathan Parker, and J. Sassurgarth, by R. S. Kneeland, their attorney; W. E. Smith, William Barnes, E. G. Ryan, and John S. Rockwell.

JAS. G. JENKINS, *Milwaukee.*
HENRY SANDES, *Milwaukee.*

375 STATE OF WISCONSIN, *County of Milwaukee, ss:*

On this twenty-third day of May, in the year of our Lord one thousand eight hundred and fifty-nine, before me personally came William Barnes, Russell Sage, and Russell Sage, attorney for L. D. Coman, L. A. Battershall, R. Pardow, jr., L. H. Buell, H. G. Gil-

bert, Roscius R. Kennedy, Alfred Noxon, George T. Gray, J. M' Lovett, S. H. Alden, William Gould, J. F. Frost, William Watson, Eli Kelly, J. Templeton, S. R. Foster, A. Fleming, and George W. McLean, Stoddard Judd, E. Cramer, Alexander Mitchell, C. Hawley, W. B. Gilbert, John W. Davis, William R. Sill, H. Crocker, R. S. Kneeland, and R. S. Kneeland, as attorney for H. H. Wheelock, John C. Denison, J. H. Wheelock, H. Beckwith, Nathan Parker, and F. Sussurgurth, W. E. Smith, William Barnes, E. G. Ryan, and John S. Rockwell, to me known to be the same persons described in and who executed the foregoing instrument, and severally acknowledged to me that they executed the same freely and voluntarily, for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal this twenty-third day of May, in the year one thousand eight hundred and fifty-nine.

[SEAL.]

JAS. G. JENKINS,
Notary Public, Milwaukee Co., Wis.

Duplicate A.

STATE OF WISCONSIN, *Secretary's Office, ss:*

Received for record May 24th, A. D. 1859, at nine o'clock a. m., and recorded in book of railroad mortgages, on pages 404 to 410, inclusive.

J. D. RUGGLES, *Ass't Sec'y of State.*

376 Circuit court of the United States for the district of Wisconsin, in equity.

FREDERICK P. JAMES *et al.*
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company and Selah Chamberlain.

The parties hereby stipulate that the foregoing printed matter hereto attached, being from pages (as numbered) 261 to 296, inclusive, being the proceedings on the pretended foreclosure of the Barnes mortgage, may be read in evidence on the hearing of this cause with the same effect as though the original papers and documents of which the said printed matter is copies were duly presented and proved, and given in evidence before the examiner, subject to any objection on the part of the complainants that they might or could take to the originals if presented, proved, and given in evidence in the cause before the examiner.

Dated May 15, 1863.

MATT. H. CARPENTER,
Sol. for Mil. and Minn. R. R. Co.

Also admitted that the same were recorded at length in the office of secretary of state of Wisconsin, as noted at foot of page 296, on the 1st September, 1858, at 8 o'clock a. m.

FINCHES, LYNDE & MILLER,
Sol'rs for Compl'ts.

377 *Proceedings in foreclosure of 3d mortgage.*

Whereas the La Crosse and Milwaukee Railroad Company, a corporation duly constituted by the laws of the State of Wisconsin, on the twenty-first day of June, A. D. 1858, duly executed to the undersigned a mortgage deed for the purpose of securing the payment of bonds to the amount of two millions of dollars, with the interest coupons thereto attached, which was recorded in the office of the secretary of state of the State of Wisconsin, in the book of railroad mortgages, on pages 342 to 348, inclusive, on the eighth day of July, A. D. 1858; and whereas, also, the said La Crosse and Milwaukee Railroad Company, on the eleventh day of August, A. D. 1858, duly executed to the undersigned a supplementary mortgage or trust deed for the purposes aforesaid, which was recorded in the office of the secretary of State of the State of Wisconsin, in the book of railroad mortgages, on pages 349 to 361, inclusive, on the first day of September, A. D. 1858, whereby all and singular the railroad of said company, commencing in the city of Milwaukee and running from thence to La Crosse, in said State, a distance of about two hundred miles, constructed and to be constructed, and also all the railroad of said company, commencing in the village of Madison, in said State, and running from thence by way of Portage City to the St. Croix river or lake, in said State, a distance of about two hundred and sixty-eight miles, constructed and to be constructed; and also all the railroad of said company, commencing in the village of Columbus, in said State, and running from thence to Portage City, in said State, a distance of about forty miles, constructed and to be constructed, and all other railroads built or to be built and constructed by said company, or which they have a right to construct by or under any corporate or other rights, privileges, or franchises granted or given to said company by the legislature of the State of Wisconsin, or from any other source or in any other manner whatever, including all and singular the several tracts, pieces, or parcels of land which constituted or might thereafter constitute the site of the roadways, turnouts, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which constituted or might thereafter constitute, or be a part of, or appertain to said railroads; and including also all and singular the lots, lands, and real estate whatsoever which the said company owned or might thereafter acquire by purchase, grant, gift, or otherwise, in the cities of Milwaukee and
378 La Crosse, or in the vicinity of either of said cities, and all improvements made or thereafter to be made thereon, and all rights of dockage and wharfage, and all other riparian rights and privileges and franchises appertaining thereto, as particularly described in the various deeds of the same to said company; and also all and singular the superstructure of said railroads, whether then made and constructed or thereafter to be constructed, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroads, built, or thereafter to be built and constructed; and also all and singular the

locomotive engines, and other rolling stock, and all the other equipments of every kind and description, procured or thereafter to be procured for or used on said railroads, and all the materials, tools, implements, and utensils, and other personal property, procured or thereafter to be procured for or used in connexion with said railroads; and also all and singular the rights, liberties, privileges, and franchises of said La Crosse and Milwaukee Railroad Company of every kind and description; and also all and singular the lands granted or intended to be granted to said La Crosse and Milwaukee Railroad Company under and by virtue of the act of Congress approved June 3d, 1856, entitled "An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State," and the act of the legislature of the State of Wisconsin, approved October 11th, 1856, entitled "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust created by an act of Congress entitled 'An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State, approved June 3d, 1856,'" together with all and singular the hereditaments and appurtenances belonging or in anywise appertaining to the said lands; and also all and singular the bonds, bills of exchange, promissory notes, accounts, causes of action, demands, and choses in action of whatsoever nature, owned wholly or in part by said railroad company, on such day as the said railroad company might first make default in the payment of the principal or interest which might thereafter become due on any of the said bonds issued by said company under said trust deeds or mortgages, and all the property, real, personal, and mixed, of said railroad company, then acquired and vested, or thereafter to be acquired and vested, together with all the
379 rights, liberties, privileges of said railroad company, as fully and amply as if said railroads had been entirely built, constructed, and equipped, and the particular lands granted by the foregoing acts of Congress and the legislature of the State of Wisconsin fully designated and duly patented and conveyed to said railroad company according to the provisions of the said acts, were conveyed to the undersigned, to be held by him in trust for and as security to the bondholders of said company for the payment of the said bonds, with the interest thereon secured by said mortgage deeds.

And whereas by said trust or mortgage deeds it was provided that if said railroad company should make default for the space of fifteen days in the payment of any of the interest warrants or coupons accompanying the said bonds as they respectively became due, or if default for the like period should be made in the payment at maturity of the principal sum of money mentioned in any of the said bonds secured by said mortgage deeds, then and in either of said cases the undersigned, as trustee, was authorized in his discretion to enter into and take possession of all and singular the railroads and all the other property, real, and personal, and mixed, covered or conveyed, or intended to be covered or conveyed by said trust deeds, with all the rights, liberties, privileges, and franchises of said company, and to take and receive the income and profits thereof, and to sell all and

singular said railroads, and said other property, real, personal, and mixed, with all the rights, liberties, privileges, and franchises of said company covered and conveyed, or intended to be covered or conveyed, by said mortgage deeds, either at public or private sale; and also that on the written request of the holder or holders of said bonds then outstanding, to the amount, in the aggregate, of one hundred thousand dollars, the undersigned should proceed to make such sales and conveyances for the purpose of paying the said outstanding bonds and the interest thereon; but in case of any sale at auction, it was provided that notice of such intended sale should be published once in each week for three weeks at the least in two newspapers published in the city of Milwaukee, and that on such sale the undersigned should execute and deliver to the purchaser or purchasers deeds and conveyances which should vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of the undersigned trustee and said railroad company of, in, and to the said property, rights, liberties, privileges, and franchises, and every part and parcel thereof.

380 And whereas the interest that became on the first day of January, A. D. 1859, upon all of the bonds issued by said company, secured by the mortgage deeds aforesaid, amounting to the sum of about seventy thousand dollars, was not paid by said company when it became due, and said company having made default in such payment for the space of more than fifteen days.

And whereas, also, holders of said outstanding bonds, amounting, in the aggregate, to the sum of over one hundred thousand dollars, have duly requested in writing, in compliance with said mortgage deeds, that the undersigned should proceed to make such sales and conveyances as aforesaid, as by their written request hereto annexed will more fully appear.

And whereas the undersigned, the said William Barnes, in compliance with such request, did cause due notice of such sale at auction, signed by the said William Barnes, and bearing date the twenty-fourth day of February, 1859, to be published once in each week for three successive weeks next before the twenty-sixth day of March, A.D. 1859, in the Milwaukee Free Democrat, a daily newspaper published in the city of Milwaukee, and State of Wisconsin, and in the New York Times, and the New York Daily Tribune, daily newspapers published in the city of New York, in compliance with the provisions of the said mortgage or trust deeds, giving notice that in pursuance of the authority vested in the undersigned by the said mortgage deeds, the undersigned should expose for sale at auction to the highest bidder, in conformity to law, at the court-house in the city of Milwaukee, in said State of Wisconsin, on the twenty-sixth day of March, A. D. 1859, at twelve o'clock a. m. of that day, all and singular the said railroads, and real, personal, and other property of whatsoever nature, covered by said trust deeds, together with all the said rights, privileges, and franchises appertaining thereto, and also all the corporate and other rights, privileges, and franchises appertaining thereto, and also all the corporate and other rights, privileges, and fran-

chises of the said La Crosse and Milwaukee Railroad Company which may be included in, covered, or conveyed, or intended to be covered or conveyed by said mortgage deeds, in order to pay the said outstanding bonds and interest, and the costs and expenses of that sale. And whereas the sale thereby advertised was by the undersigned on the twenty-sixth day of March, A. D. 1859, postponed and adjourned to the twenty-third day of April, 1859, at twelve o'clock m. of that day, at the court-house in the city of Milwaukee aforesaid, and the undersigned did thereupon cause a notice, by him signed, of such
381 postponement and adjournment, and that such sale would accordingly take place on the day and at the place last mentioned, to be published in the said newspapers once a week for three successive weeks immediately preceding the said twenty-third day of April, A. D. 1859. And whereas the sale thereby advertised was by the undersigned, on the twenty-third day of April, A. D. 1859, postponed and adjourned to the twenty-first day of May, A. D. 1859, at twelve o'clock m. of that day, at the court-house in the city of Milwaukee aforesaid, and the undersigned did thereupon cause a notice, by him signed, of such postponement and adjournment, and that such sale would accordingly take place at the day and at the place last mentioned, to be published in the said newspapers once in each week for three successive weeks immediately preceding the said twenty-first day of May, A. D. 1859, as by printed copies of the said notice of sale, and of the said two several notices of adjournment, together with the affidavits of the publication thereof in the said newspaper hereto annexed, will more fully and at large appear. And whereas on the said twenty-first day of May, A. D. 1859, I, the said William Barnes, the trustee named in the said mortgage or trust deeds, did make the sale of which such notice had been so given in the manner hereinafter certified and declared :

Now know all men by these presents, that I, the said William Barnes, the trustee named in the said mortgage or trust deeds, do hereby certify and declare that, in pursuance of the authority in me vested by the said mortgage or trust deeds, and of the statutes of the State of Wisconsin in such made and provided, and of the said notice and sale, and of the said notices of adjournment and postponement thereof, I, the said William Barnes, trustee as aforesaid, did, on the said twenty-first day of May, A. D. 1859, at twelve o'clock m. of that day, attend at the court-house in the city of Milwaukee, and did then and there read the said notices of the sale and of adjournment and postponement thereof, and did thereupon then and there put up for sale at public auction, upon the steps of the said court-house, and in the presence of many persons then and there assembled, all of the railroads and real, personal, and other property, with all the rights, privileges, and franchises appertaining thereto, and all corporate and other rights, privileges and franchises, of the said La Crosse and Milwaukee Railroad Company included in, covered or conveyed, or intended to be covered or conveyed, by the said mortgage or trust deeds, in order to pay the said outstanding bonds and interest, and the costs and expenses of that sale, and that then and there, no other person or body

having made any bid for the same, I, the said William Barnes
383 trustee as aforesaid, did bid for the same the sum of one million five hundred and ninety-three thousand three hundred and thirty-three dollars and thirty-three cents, being computed to be seventy-five per cent. of the principal and of the interest on that day actually due on the outstanding bonds issued under and secured by the said mortgage or trust deeds in trust for the holders of such outstanding bonds, in pursuance of the statute in that case made and provided, and of the authority in me vested, and that then and there no further or other bid was made at such sale; and that thereupon I, the said William Barnes, having waited a reasonable time until I was satisfied that no higher bid would be made, and having given due notice thereof, did strike off the property so put up for sale to myself, as such trustee, in trust for the holders of the outstanding bonds issued under and secured by the said mortgage or trust deeds, and did publicly and in the presence of the persons present, declare myself to be the purchaser at that sale of all the property so put up for sale, as such trustee, and upon the trust aforesaid, for the said sum of one million five hundred and ninety-three thousand three hundred and thirty-three dollars and thirty-three cents; and for a more particular particular description of the property so sold I do hereby annex, as part of this certificate and declaration, a copy of the said mortgage or trust deeds. And I do hereby certify and declare that the property so sold may be redeemed within one year from and after the said date of such sale, to wit, the twenty-first day of May, A. D. 1859, and that the said sale will be absolute unless the said La Crosse and Millwaukee Railroad Company, or some subsequent incumbrances shall redeem the said railroads and property so sold by paying or depositing the amount of the said bid on the said sale and the costs of the said sale, and the interest thereon at the rate of ten per cent. per annum with me, as such trustee, together with the value of all substantial and necessary improvements made by me or those for whom I purchased in trust, whether in the further construction of said railroads or for the better use and enjoyment of the same, with interest thereon at the rate of ten per cent. per annum, within sixty days after the value of such improvements shall have been agreed upon between the parties interested or determined by three commissioners to be appointed in that behalf by the chief justice of the supreme court, pursuant to the statute in the case made and provided.

In witness whereof, I have hereunto set my hand and seal this thirty-first day of May, in the year one thousand eight hundred and fifty-nine.

WILLIAM BARNES. [SEAL.]

Signed and sealed in the presence of—
JAS. G. JENKINS.
E. G. RYAN.

384 STATE OF WISCONSIN, *County of Milwaukee, ss:*

William Barnes, named in the foregoing certificate, declaration, and report, being duly sworn, upon oath doth depose and say that the foregoing certificate, declaration, and report is true.

WILLIAM BARNES.

Sworn to before me this 31st day of May, A. D. 1859.

JAS. G. JENKINS,
Notary Public, Milwaukee Co., Wisconsin.

STATE OF WISCONSIN, *County of Milwaukee, ss:*

Be it remembered that on this thirty-first day of May, in the year of our Lord one thousand eight hundred and fifty-nine, before me, a notary public in and for the State of Wisconsin, residing in the county of Milwaukee, in said State, personally came William Barnes to me personally known, and known to me te be the same person described in and who executed the foregoing instrument, certificate, declaration, and report, and acknowledged to me that he executed the same freely and voluntarily.

In witness whereof, I have hereunto set my hand and affixed my official seal, at the city of Milwaukee, this thirty-first day of May, in the year of our Lord one thousand eight hundred and fifty-nine.

[SEAL.] JAS. G. JENKINS,
Notary Public, Milwaukee Co., Wisconsin.

Whereas, under and by virtue of a trust deed or mortgage executed by the La Crosse and Milwaukee Railroad Company to William Barnes, dated June 21st, A. D. 1858, and recorded in the office of the secretary of state of the State of Wisconsin, in book of railroad mortgages, on pages 342 to 348, inclusive, on the 8th day of July, 1858, and of a supplementary trust deed or mortgage executed by the said company to said Barnes on the 11th day of August, A. D. 1858, and recorded in the said office on the 1st day of September, 1858, in said book of railroad mortgages, pages 349 to 361, inclusive, it was provided, in substance, that in case default should at any time be made in the payment of the interest or principal on any of the outstanding bonds issued under said mortgage, then, and in either of said cases, said Barnes, on the written request of the holder or holders of bonds then outstanding to the amount, in the aggregate, of one hundred thou-
sand dollars, should proceed to make the sales and conveyances
385 of the property, real, personal, and mixed, and of the rights, franchises, privileges, &c., covered and conveyed by said trust deeds or mortgages. Now, therefore, we, the undersigned holders and owners of such outstanding bonds, in the various sums set opposite our respective names, do hereby request William Barnes, the said trustee, to proceed and make such sales and conveyances as provided in said trust deeds or mortgages, either by advertisement or foreclosure by suit, in such manner as he may deem expedient. And we do hereby also request said Barnes to become the purchaser, on such sale or sales, in trust for the bondholders, at the sum of seventy-five per cent. of the amount of outstanding bonds and unpaid interest thereon,

issued and registered under said trust deeds and mortgages, or at any such higher sum, not exceeding the full amount of all of said outstanding bonds and the unpaid interest thereon, in conformity to the provisions of the act passed by the legislature of Wisconsin, approved by the governor on the 8th day of February, A. D. 1859, entitled "An act supplemental to chapter 19 of the Revised Statutes entitled 'of railroads.'" And we, the undersigned, in consideration of the premises, do hereby severally promise and agree with said Barnes to pay him, and also to indemnify and save him harmless from all costs, charges, damages, and losses, of whatever name and nature, which he may incur or become liable for in prosecuting, making, or defending such foreclosure and sale, and the proceedings and steps incident or necessary thereto, in proportion to the amount of said bonds held by us, respectively.

FEBRUARY 11*th*, 1859.

Names.	Amounts.
Russell Sage	80,000
Alex. Mitchell	6,000
S. S. Rose	25,000
Wm. E. Cramer	7,500
Cyrus Hawley	7,400
C. Hawley, ex'r estate of F. W. Hawley	3,000
H. J. Nazro & Co	3,000
H. Ludington & Co	1,300
Wm. P. Lynde, administrator of estate of C. K. Watkins	16,000
E. Cramer	5,500
John Cramer, by E. Cramer, his att'y	1,000
Joseph Cary	1,200
A. F. Snelflohrs	800
Caswell & Gaylord	2,000
386 A. B. Nancott	1,000
Chas. Schley	8,000
John S. Reckwell	22,000
Geo. F. Gray	20,000
J. N. Lovett	20,000
J. S. Rogers, president Rogers's Locomotive Works	7,000
L. D. Coman	14,000
A. Fleming	20,000
G. W. McLean	10,000
Tracy R. Edson	900
Nezial Wright	200
W. H. Peckham	10,000

STATE OF WISCONSIN, *County of Milwaukee, ss:*

L. L. Crounse, being duly affirmed, says that he is one of the publishers of the Milwaukee Free Democrat, a newspaper published in the city of Milwaukee, in said county; that a notice, of which the one annexed is a true copy, was duly published in such newspaper once

in each week for four consecutive weeks, commencing on the 24th day of February, A. D. 1859, and ending on the 24th day of March, A. D. 1859.

L. L. CROUNSE.

Subscribed and affirmed to this 21st day of May, A. D. 1859, before me.

CHAS. C. PAINE,
Notary Public Milwaukee Co., Wisconsin.

[Advertisement 7.] Whereas the La Crosse and Milwaukee Railroad Company, a corporation duly constituted by the laws of the State of Wisconsin, on the 21st day of June, A. D. 1858, duly executed to the undersigned a mortgage deed for the purpose of securing the payment of bonds to the amount of two millions of dollars, with the interest coupons thereto attached, which was recorded [Advertisement 8.] in the office of the secretary of state of the State of Wisconsin, in the book of railroad mortgages, on pages 342 to 348, inclusive, on the 8th day of July, 1858; and whereas, also, the said La Crosse and Milwaukee Railroad Company, on the 11th day of August, 1858, duly executed to the undersigned a supplementary mortgage or trust deed, for the purpose aforesaid, which was recorded in the office of the secretary of state of the State of Wisconsin, in the book of railroad mortgages, on pages 349 to 361, inclusive, on the 1st day of September, 1858, whereby all and singular the railroad of said company commencing in the city of
387 Milwaukee and running from thence to La Crosse, in said State, a distance of about two hundred miles, constructed and to be constructed, and also all the railroad of said company commencing in the village of Madison, in said State, and running from thence, by way of Portage City, to the St. Croix river or lake, in said State, a distance of about two hundred and sixty-eight miles, constructed and to be constructed, and also all the railroad of said company commencing in the village of Columbus, in said State, and running from thence to Portage City, in said State, a distance of about forty miles, constructed and to be constructed, and all other railroads built or to be built and constructed by said company, or which they have a right to construct by or under any corporate or other rights, privileges, or franchises granted or given to said company by the legislature of the State of Wisconsin, or from any other source, or in any other manner whatever, including all and singular the several tracts, pieces, or parcels of land which constituted, or might thereafter constitute, the site of the roadways, turnouts, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which constituted, [Advertisement 9.] or might thereafter constitute or be a part of or appertain to said railroad, and including also all and singular the lots, lands, and real estate whatsoever which the said company owned or might thereafter acquire by purchase, grant, gift, or otherwise, in the cities of Milwaukee and La Crosse, or in the vicinity of either of said cities, and all improvements made or there-

after to be made thereon, and all rights of wharfage and dockage, and all other riparian rights and privileges and franchises appertaining thereto, as particularly described in the various deeds of the same to said company; and also all and singular the superstructure of said railroads, whether then made and constructed or thereafter to be constructed, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroads, built or thereafter to be built and constructed; and also all and singular the locomotive engines and other rolling stock, and all the other equipments, of every kind and description, procured or thereafter to be procured for or used on said railroads, and all the materials, tools, implements, and utensils, and other personal property, procured or thereafter to be procured for or used in connexion with said railroads; and also all and singular the rights, liberties, privileges, and franchises of said La Crosse and Milwaukee Railroad Company, of every kind and description: and also all and singular the lands granted, or intended to be granted, to said La Crosse and Milwaukee Railroad Company under and by virtue of the act of Congress approved June 3d, 1856, entitled "An act granting public lands to
388 the State of Wisconsin to aid in the construction of railroads in said State," and the act of the legislature of the State of Wisconsin approved October 11th, 1856, entitled "An act to grant
[Advertisement 10.] certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust created by an act of Congress entitled 'An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State,' approved June 3d, 1856, together with all and singular the hereditaments and appurtenances belonging or in anywise appertaining to the said lands; and also all and singular the bonds, bills of exchange, promissory notes, accounts, causes of action, demands and choses in action, of whatever nature, owned wholly or in part by said railroad company, on such day as the said railroad company might first make default in the payment of the principal or interest which might thereafter become due on any of the said bonds issued by said company under said trust deed or mortgages; and all the property, real, personal, and mixed, of said railroad company, then acquired and vested or thereafter to be acquired and vested, together with all the rights, liberties, privileges, and franchises of said railroad company, as fully and amply as if said railroads had been entirely built, constructed, and equipped; and the particular lands granted by the foregoing acts of Congress and the legislature of the State of Wisconsin, fully designated and duly patented and conveyed to said railroad company according to the provisions of the said acts, were conveyed to the undersigned, to be held by him in trust for and as security to the bondholders of said company for the payment of the said bonds, with the interest thereon, secured by said mortgage deeds; and whereas, by said trust or mortgage deeds, it was provided that, if said railroad company should make default for the space of fifteen days in the payment of any of the interest warrants or coupons accompanying the said bonds as they respectively become due, or if default for

the like period should be made in the payment at maturity of the principal sum of money mentioned in any of the said bonds secured by said mortgage deeds, then, and in either of said cases, the undersigned, as trustee, was authorized, in his discretion, to enter into and take possession of all and singular the railroads and all the other property, real, personal, and mixed, covered or conveyed, or intended to be covered or conveyed, by said trust deeds, with all the rights, liberties, privileges, and franchises of said company, and to take and receive the income and profits thereof, and to sell all and singular said railroads and said other property, real, personal, and mixed, with all the rights, lib-
389 erties, privileges, and franchises of said railroad company, covered and conveyed, or intended to be covered and conveyed, by said mortgage deeds, either at public or private sale, and also that, on the written request of the holder or holders of said bonds then outstanding to the amount, in the aggregate, of one hundred thousand dollars, the undersigned should proceed to make such sales and conveyances for the purpose of paying the said outstanding bonds and the interest thereon; but in case of any sale at auction, it was provided that notice of such intended sale should be published once in each week for three weeks at the least, in two newspapers published in the city of New York and in a newspaper published in the city of Milwaukee, and that on such sale the undersigned should execute and deliver to the purchaser or purchasers deeds and conveyances which should vest in such purchaser or purchasers all the estate, right, title,
[Advertisement 12.] and interest, whether legal or equitable, of the undersigned trustee and said railroad company of, in, and to the said property, rights, privileges, liberties, and franchises, and every part and parcel thereof.

And whereas the interest that became due on the 1st day of January, 1859, upon all the bonds issued by said company, secured by the mortgage deeds aforesaid, amounting to the sum of about seventy thousand dollars, was not paid by said company when it became due, and said company having made default in such payment for the space of more than fifteen days; and whereas, also, holders of said outstanding bonds amounting, in the aggregate, to the sum of over one hundred thousand dollars, had duly requested in writing, in compliance with said mortgage deeds, that the undersigned should proceed to make such sales and conveyances as aforesaid.

Now, therefore, notice is hereby given that, in pursuance of the authority vested in the undersigned by said mortgage deeds, I shall expose for sale at auction to the highest bidder, in conformity to law, at the court-house in the city of Milwaukee, in said State, on the twenty-ninth of March, A. D. 1859, at 12 o'clock m. of that day, all and singular the said railroad, and real, personal, and other property, of whatsoever nature, covered by said trust deeds, together with all the said rights, privileges, and franchises appertaining thereto; and also all the corporate and other rights, privileges, and franchises of said La Crosse and Milwaukee Railroad Company which may be included in, covered or conveyed, or intended to be covered and con-

[Advertisement 13.] veyed, by said mortgage deeds, in order to pay the said outstanding bonds and interest, and the costs and expenses of this sale.

WILLIAM BARNES, *Trustee.*

Dated Albany, February 24th, 1859.

390 STATE OF WISCONSIN, *Milwaukee county, ss:*

L. L. Crounse, being duly affirmed, says that he is one of the publishers of the "Milwaukee Free Democrat," a newspaper published in the city of Milwaukee, in said county; that a notice, of which the one annexed is a true copy, was duly published in such newspaper once in each week for four successive weeks, commencing on the 31st day of March, A. D. 1859, and ending on the 21st day of April, A. D. 1859.

L. L. CROUNSE.

Subscribed and affirmed to this 21st day of May, A. D. 1859, before me.

CHAS. C. PAINE,
Notary Public, Milwaukee County, Wisconsin.

(Here follows the same advertisement as is annexed to the first affidavit of L. L. Crounse, and marked in the margin, "Advertisement 7, 8, 9, 10, 11, 12, 13," with this addition, namely:

"The above sale is hereby postponed and adjourned to, and will be made on, Saturday, the twenty-third day of April, 1859, at twelve o'clock m. of that day, at the court-house in the city of Milwaukee, in the State of Wisconsin.

"Dated Milwaukee, March 26th, 1859.

"WILLIAM BARNES, *Trustee.*")

STATE OF WISCONSIN, *Milwaukee county, ss:*

L. L. Crounse, being duly affirmed, says that he is one of the publishers of the "Milwaukee Free Democrat," a newspaper published in the city of Milwaukee, in said county; that a notice, of which the one annexed is a true copy, was duly published in such newspaper once in each week for four successive weeks, commencing on the 28th day of April, A. D. 1859, and ending on the 19th day of May, A. D. 1859.

L. L. CROUNSE.

Subscribed and affirmed to this 21st day of May, A. D. 1859, before me.

CHAS. C. PAINE,
Notary Public, Milwaukee Co., Wis.

(Here follows the same advertisement as is annexed to the first affidavit of L. L. Crounse, and marked in the margin, "Advertisement 7, 8, 9, 10, 11, 12, 13," with these additions, namely:

"The above sale is hereby postponed and adjourned to, and will

be made on Saturday, the twenty-third day of April, 1859, at
261 twelve o'clock M. of that day, at the court-house in the city of Milwaukee, in the State of Wisconsin.

Dated Milwaukee, March 24th, 1859.

WILLIAM BARNES, *Trustee.*"

"The above sale is hereby postponed and adjourned to, and will be made on Saturday, the twenty-first day of May, 1859, at twelve o'clock M. of that day, at the court-house in the city of Milwaukee in the State of Wisconsin.

Dated Milwaukee, April 23d, 1859.

WILLIAM BARNES, *Trustee.*"

State of New York, *City and county of New York, ss:*

M. F. Gale, being duly sworn, saith that he is in the office of the "New York Times," a newspaper printed in the city of New York; that the advertisement hereto annexed has been regularly published in the said New York Times four times, once each week successively, commencing on the 24th day of February, 1859.

M. F. GALE.

Sworn to before me this 25th day of May, 1859.

J. G. HARGER,

Commissioner of deeds, &c., New York.

E. A. WATKINSON,

Comm. for Wisconsin.

Here follows the same advertisement as is annexed to the first affidavit of L. L. Crounse, and marked in the margin "Advertisement No. 9. 10. 11. 12. 13."

State of New York, *City and county of New York, ss:*

Be it remembered, that on the 25th day of May, 1859, in the city aforesaid, before me, Bedford A. Watkinson, a commissioner residing in said city, duly commissioned and qualified by the executive authority and under the laws of the State of Wisconsin to take the acknowledgment of deeds and to administer oaths, &c., to be used in records therein, personally appeared M. F. Gale, to me personally known, and whose name is subscribed to the annexed affidavit, who, being duly sworn, made oath that he knew the contents of said affidavit, and that it is true.

In testimony whereof, I have hereunto set my hand and affixed the seal of my office, on the 25th day of May, in the year of our Lord 1859.

[L. S.]

E. A. WATKINSON,

Commissioner, &c., 39 Nassau St.

262 State of New York, *City and county of New York, ss:*

M. F. Gale, being duly sworn, saith that he is foreman in the office of the "New York Times," a newspaper printed in the city of New York; that the advertisement hereto annexed has been regularly

published in the said New York Times four times, once each wee successively, commencing on the 31st day of March, 1859.

M. F. GALE.

Sworn to before me this 25th day of May, 1859.

G. O. HARGER.
Commissioner of deeds, &c., New York.

R. C. WATKINSON.
Com'r for Wisconsin.

(Here follows the same advertisement as is annexed to the first affidavit of L. L. Crounse, and marked in the margin "Advertisement 7, 8, 9, 10, 11, 12, 13." with this addition, namely:

"The above sale is postponed to Saturday, April 23d, same hour and place.

"WILLIAM BARNES, *Trustee.*")

STATE OF NEW YORK, *City and county of New York, ss:*

Be it remembered, that on the 25th day of May, A. D. 1859, at the city aforesaid, before me, Redford A. Watkinson, a commissioner resident in said city, duly commissioned and qualified by the executive authority and under the laws of the State of Wisconsin to take the acknowledgment of deeds and to administer oaths, &c., to be used or recorded therein, personally appeared M. F. Gale, to me personally known, and whose name is subscribed to the annexed affidavit, who, being by me duly sworn, made oath that he knew the contents of said affidavit, and that it is true.

In testimony whereof, I have hereunto set my hand and affixed the seal of my office, on the 25th day of May, in the year of our Lord one thousand eight hundred and fifty-nine.

[L. S.] R. A. WATKINSON.
Commissioner, &c., 20 Nassau St.

STATE OF NEW YORK, *City and county of New York, ss:*

M. F. Gale, being duly sworn, saith that he is foreman in the office of the "New York Times," a newspaper printed in the city
393 of New York: that the advertisement hereto annexed has been regularly published in the said New York Times four times, once each week successively, commencing on the 28th day of April, 1859.

M. F. GALE.

Sworn to before me this 25th day of May, 1859.

J. O. HARGER.
Commissioner of Deeds, New York.

R. A. WATKINSON.
Commissioner for Wisconsin.

(Here follows the same advertisement as is annexed to the first affidavit of L. L. Crounse, and marked in the margin "Advertisement 7, 8, 9, 10, 11, 12, 12, 13," with these additions, namely:

"The above sale is postponed to Saturday, April 23d, same hour and place.

"WILLIAM BARNES, *Trustee.*

"Milwaukee, March 26th, 1859.")

(Rec. CXCVIII, CC, CCIII, D. T. 1861.)—18.

"The above sale is further postponed to Saturday, May 21st, 1859, same hour and place.

"WILLIAM BARNES, *Trustee.*

"Milwaukee, April 25th, 1859."

STATE OF NEW YORK, *City and county of New York, ss:*

Be it remembered, that on the 26th day of May, A. D. 1859, at the city aforesaid, before me, Redford A. Watkinson, a commissioner resident in said city, duly commissioned and qualified by the executive authority and under the laws of the State of Wisconsin, to take the acknowledgment of deeds and to administer oaths, &c., to be used or recorded therein, personally appeared M. F. Gale, to me personally known, and whose name is subscribed to the annexed affidavit, who, being by me duly sworn, made oath that he knew the contents of said affidavit, and that it is true.

In testimony whereof, I have hereunto set my hand and affixed the seal of my office, on the twenty-fifth day of May, in the year of our Lord one thousand eight hundred and fifty-nine.

[L. S.] R. A. WATKINSON,
Commissioner, &c., 20 *Nassau St.*

STATE OF NEW YORK, *City and county of New York, ss:*

Thomas N. Rooker, being duly sworn, saith that he is foreman in the office of the "New York Daily Tribune," a newspaper printed in the city of New York: that the advertisement hereto annexed
394 has been regularly published in the said New York Daily Tribune once a week, five weeks successively, commencing on the twenty-fourth day of February, 1859.

THOMAS N. ROOKER.

Sworn to before me this 25th day of May, 1859.

R. A. WATKINSON, *Commissioner for Wisconsin.*

(Here follows the same advertisement as is annexed to the first affidavit of L. L. Crounse, and marked in the margin "Advertisement 7, 8, 9, 10, 11, 12, 13.")

STATE OF NEW YORK, *City and county of New York. ss:*

Be it remembered, that on the 25th day of May, A. D. 1859, at the city aforesaid, before me, Redford A. Watkinson, a commissioner resident in said city, duly commissioned and qualified by the executive authority and under the laws of the State of Wisconsin to take the acknowledgment of deeds and to administer oaths, &c., to be used

or recorded therein, personally appeared Thomas N. Rooker, to me personally known, and whose name is subscribed to the annexed affidavit, who, being by me duly sworn, made oath that he knew the contents of said affidavit, and that it is true.

In testimony whereof, I have hereunto set my hand and affixed the seal of my office, on the twenty-fifth day of May, in the year of our Lord one thousand eight hundred and fifty-nine.

[L. S.] R. A. WATKINSON,
Commissioner, &c., 20 Nassau St.

STATE OF NEW YORK, *City and county of New York, ss:*

Thomas N. Rooker, being duly sworn, saith that he is foreman in the office of the "New York Daily Tribune," a newspaper printed in the city of New York; that the advertisement hereto annexed has been regularly published in the said New York Daily Tribune once a week, four weeks successively, commencing on the thirty-first day day of March, 1859.

THOMAS N. ROOKER.

Sworn to before me this 25th day of May, 1859.
ROBERT H. STUBERGH,
Commissioner of Deeds, &c., New York.
R. A. WATKINSON.
Commissioner for Wisconsin.

(Here follows the same advertisement as is annexed to the first affidavit of L. L. Crounse, and marked in the margin "Advertisement 7, 8, 9, 10, 11, 12, 13," with this addition, namely:
395 "The above sale is adjourned to the twenty-third day of April, A. D. 1859, at the same hour and place.
"Dated Milwaukee, March 26, 1859.
"WILLIAM BARNES, *Trustee.*"

STATE OF NEW YORK, *City and county of New York, ss:*

Be it remembered, that on the 25th day of May, A. D. 1859, at the city aforesaid, before me, Redford A. Watkinson, a commissioner resident in said city, commissioned and qualified by the executive authority and under the laws of the State of Wisconsin to take the acknowledgment of deeds and to administer oaths, &c., to be used or recorded therein, personally appeared Thomas N. Rooker, to me personally known and whose name is subscribed to the annexed affidavit, who, being by me duly sworn, made oath that he knew the contents of said affidavit, and that it is true.

In testimony whereof, I have hereunto set my hand and affixed the seal of my office, on the twenty-fifth day of May, in the year of our Lord one thousand eight hundred and fifty-nine.

[L. S.] R. A. WATKINSON,
Commissioner, &c., 20 Nassau St.

STATE OF NEW YORK, *City and county of New York, ss:*

Thomas N. Rooker, being duly sworn, saith that he is foreman in the office of the "New York Daily Tribune," a newspaper printed in the city of New York; that the advertisement hereto annexed has been regularly published in the said New York Daily Tribune once a week, four weeks, Thursdays, successively, commencing on the twenty-eighth day of April, 1859.

THOMAS N. ROOKER.

Sworn to before me this 27th day of May, 1859.

ROBERT A. STEBERGH,
Commissioner of Deeds, &c.
R. A. WATKINSON,
Comm'r for Wisconsin.

(Here follows the same affidavit as is annexed to the first affidavit of L. L. Crounse, and marked in the margin "Advertisement 7, 8, 9, 10, 11, 12, 13," with these additions, namely: "The above sale is adjourned to the twenty-third day of April, A. D. 1859, at the same hour and place.

"Dated Milwaukee, March 26th, 1859.

"WILLIAM BARNES, *Trustee.*

"The above sale is further adjourned to the twenty-first
396 day of May, A. D 1859, at the same hour and place.

"Dated Milwaukee, April 29th, 1859.

"WILLIAM BARNES, *Trustee.*")

STATE OF NEW YORK, *City and county of New York, ss:*

Be it remembered, that on the 25th day of May, A. D. 1859, at the city aforesaid, before me, Redford A. Watkinson, a commissioner resident in said city, duly commissioned and qualified by the executive authority and under the laws of the State of Wisconsin to take the acknowledgment of deeds and to administer oaths, &c., to be used or recorded therein, personally appeared Thomas N. Rooker, to me personally known, and whose name is subscribed the annexed affidavit, who, being by me duly sworn, made oath that he knew the contents of said affidavit, and that it is true.

In testimony whereof, I have hereunto set my hand and affixed the seal of my office on the 25th day of May, in the year of our Lord one thousand eight hundred and fifty-nine.

[L. S.] R. A. WATKINS,
Commissioner, &c., 20 *Nassau St.*

397 *Exhibit No. 1.—Trust deed.*

This indenture, made the twenty-first day of June, in the year of our Lord eighteen hundred and fifty-eight, between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, party of the first part, and William Barnes, of the city of Albany, and State of New York, trustee as hereinafter mentioned, party of the second part.

Whereas the said railroad company, for the purpose of providing for and securing the payment of its floating debt, and for other purposes, has determined to issue its bonds for a sum not exceeding two millions of dollars in the aggregate, embracing one thousand bonds of one thousand dollars each, fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, with interest warrants in the usual form attached, and which bonds will be substantially in the following form, to wit:

UNITED STATES OF AMERICA, *State of Wisconsin.*

No. ——. $——.

Know all men by these presents, that the La Crosse and Milwaukee Railroad Company, for value received, acknowledge itself indebted to the bearer thereof in the sum of dollars, which sum it agrees to pay to the bearer hereof on the first day of July, in the year of our Lord one thousand eight hundred and eighty-eight, at the Albany Exchange Bank, in the city of Albany, with interest at the rate of seven per cent. per annum, payable at the Albany Exchange Bank, in the city of Albany, semi-annually, on the first day of January and the first day of July in each year, on presentation or delivery of the interest warrants or coupons hereto annexed. This is one of a series of bonds, all of the same tenor, making in the aggregate the sum of two millions of dollars, for securing the payment of which a trust deed has been executed by said company to William Barnes, of the city of Albany and State of New York, conveying to him (subject to certain charges thereon) the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred miles, part of which road has been constructed and is now in full operation, and the residue is in process of construction, together with the equipments and all other things pertaining, or which may hereafter pertain, to the road so conveyed, reference to which deed is hereby had and made for a more full description of its contents. And for further securing and providing for the payment of said bonds, the said deed of trust provides for the creation of a sinking fund, the first payment of $25,000 to which is to be made by said company to William Barnes, of Albany, the trustee named in said deed of trust, on the first day of July, eighteen hundred and sixty-one, and thereafter a like sum annually, with which sum, as from time to time paid, the said trustee is to purchase outstanding bonds secured by said deed of trust, as is more particularly specified in said deed of trust, to which reference is hereby made.

In witness whereof, said railroad company has hereunto affixed its corporate seal, and caused the same to be signed by the president and secretary, this 21st day of June, in the year of our Lord one thousand eight hundred and fifty-eight.

——— ———, *President.*

——— ———, *Secretary.*

Registered and countersigned this ——, 185 .

——— ———, *Trustee.*

And whereas said railroad company has determined to secure the payment of said bonds, with the interest thereon, in the manner herein provided:

Now, therefore, this indenture witnesseth, that said railroad company, in consideration of the premises and the sum of one dollar paid by said party of the second part, has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm unto said party of the second part all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred (200) miles, a part of which road has been constructed and is now in full operation, and the residue is in process of construction, including all and singular the several tracts, pieces, or parcels of land which now are, or hereafter may be or constitute the site of the roadways, turnouts, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which now constitute or may hereafter constitute or be a part of or appertain to said railroad. And also all and singular the superstructure of said railroad, whether now made or to be made hereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroad, whether now built or made, or to be built or made hereafter; and also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description which have already been or may hereafter be procured for or used on said railroad, and all the materials, tools, implements, and utensils, and other personal property which have been or may hereafter be procured for or used in connexion with said railroad; and also all and singular the rights, liberties, and privileges, and franchises of said railroad company, so far as they relate to said railroad from Milwaukee to La Crosse.

And it is hereby declared to be the intention of the parties to these presents to convey to and vest in said party of the second part all the property, real and personal, of said railroad company to be acquired hereafter, as well as that which has been already acquired,

398 together with all the rights, liberties, privileges, and franchises of said railroad company, in respect to said railroad from Milwaukee to La Crosse, as fully and amply as the same might be conveyed if said railroad had already been fully constructed and equipped, excepting, however, any lands which now do or hereafter may belong to said company under any grant from the United States or the State of Wisconsin; subject, nevertheless, to lines already existing upon the property and franchises above mentioned, as follows: To a first mortgage upon the eastern division of the said road, between Milwaukee and Portage City, to secure outstanding bonds of said company, to the amount of about nine hundred and twenty-two thousand dollars; also bonds to the city of Milwaukee to the amount of three hundred and fourteen thousand dollars; also to bonds secured by second mortgages on said eastern division, subject to the amount of one million dollars. Also subject to a mortgage of four

million dollars upon the line of said road from Portage City to La Crosse, and to a second mortgage of about two hundred thousand dollars on the road from Portage City to La Crosse, and from the junction near the village of Tomah to the terminus of the road on the lakes or river St. Croix. To have and to hold all and singular the property, real and personal, with the hereditaments and appurtenances, and all and singular the rights, liberties, and franchises hereby conveyed, or intended to be conveyed, subject to the aforesaid mortgages, to the aforesaid party of the second part and his successor, and his heirs and assigns forever—in trust, nevertheless, and upon the trusts, terms, and conditions herein expressed.

First. Until default shall be made in the payment of said bonds or some of them, or the interest thereon, said railroad company shall be suffered and permitted to hold and enjoy the said railroad, with all the equipments and all other things appertaining to the same, and to use the same, and to take and receive the profits thereof to its own use, in the same manner as though this deed had not been made.

Second. In case default for the space of 15 days shall be made on the payment of any of said interest warrants or coupons as they respectively fall due, or if default for the like period shall be made in the payment at maturity of the principal sum of money mentioned in any of the said bonds, then and in either of said cases it shall be lawful, and said trustee is hereby authorized in his discretion, either in person or by his attorney or attorneys, agent or agents, to enter into and upon and take possession of all and singular the railroad and all the other property, real and personal, hereinbefore conveyed or intended to be conveyed, and to take and receive the income and profits thereof, and to sell all and singular said railroad and other property, with all the rights, liberties, privileges, and franchises of said railroad company in respect to said railroad, either at public or private sale, and to execute and deliver to the purchaser or purchasers deeds and conveyances which shall vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of said trustee and said railroad company of, in, or to said property, rights, liberties, privileges, and franchises, and every part and parcel thereof. But before any sale shall be made at auction notice of such intended sale shall be published once in each week for three weeks at the least, in two newspapers published in the city of New York, and in a newspaper published in the city of Milwaukee, and should any further notice be required by the laws of the State of Wisconsin, the same shall be given. And in case default shall at any time be made in the payment of the interest on the bonds then outstanding, or in case default shall be made in the payment of the principal sum of money mentioned in said bonds, or any of them, at maturity, then and in either of said cases, said trustee, on the written request of the holder or holders of bonds then outstanding to the amount, in the aggregate, of one hundred thousand dollars, shall proceed to make such sales and conveyances so as above mentioned.

Third. Said railroad company covenants and agrees to and with

said trustee, and his successor, that said company will, from time to time, during the continuance of the trust, make, execute, and cause to be duly recorded, and deliver to said trustee, all such further conveyances and assurances, and will do all such further acts and things as may be either necessary or proper for more effectually vesting in said trustee all such right, title, interest or estate, both legal and equitable, as said railroad company now has, or may hereafter acquire, of, in, or to all and every part of the property hereby conveyed, or intended to be conveyed, together with the rights, liberties, privileges, and franchises aforesaid.

Fourth. Said railroad company will cause this indenture to be duly recorded in all proper places, and will do whatever else may be necessary or proper to give full effect to the conveyance, and will pay and discharge all taxes, charges, liens, and other burdens which either exist or may hereafter arise or be imposed upon the property hereby conveyed, or intended to be conveyed, and the trustee assumes no duty or responsibility on these subjects, or any of them, nor in relation to any other matter or thing, except as herein provided.

Fifth. This trust extends only to such bonds as shall be registered and countersigned by the trustee; and when all of said bonds shall be satisfied and discharged, the trust shall cease. The trust shall also cease at the end of six calendar months after the principal moneys shall fall due, as to all such bonds as shall not then have been presented for payment. And whenever the trust shall determine, and any moneys which may be due to the trustee shall be paid, the trustee will re convey to said railroad company all this right, title, and interest of, in, and to the trust property.

Sixth. Said railroad company will, from time to time, pay all costs, charges, expenses, and compensation of the trustee in, about, or for the execution of the trust, and will in all things keep him fully indemnified and saved harmless of, from, and against all damages, costs, charges, and expenses which he may sustain or be part to in consequence of accepting this trust, or of anything which may be done or omitted under it, saving only such damages as may arise from the culpable act or neglect of the trustee.

Seventh. And the said railroad company agree to establish and provide a sinking fund for the gradual redemption and payment of said bonds, and for that purpose will pay to the said trustee, on the first day of July, eighteen hundred and sixty-one, and annually thereafter until this trust is closed, the sum of twenty-five thousand dollars; with such sum, as from time to time the same shall be paid, the said trustee shall from time to time purchase, outstanding bonds, secured by this deed of trust, at the lowest price he can pur-
399 chase the same for, first giving ten days' public notice in one or more newspapers published in New York, Albany, and Milwaukee, respectively, of his desire to purchase so many of said bonds as can be obtained for the money of said sinking fund then in his hands, and all bonds so purchased, belonging to said sinking fund, shall be retained by said trustee until this trust be closed.

Eighth. The trustee is hereby authorized to appoint all such attorneys, counsellors, clerks, and other agents as he may deem proper in the execution of the trust, and shall not be answerable for the defaults or other misconduct of such attorneys, counsellors, or other agents, unless chargeable with culpable negligence in their selection, nor shall the trustee be responsible for anything short of gross negligence or wilful default in the discharge of any of his duties.

Ninth. All moneys which may be received by the trustee under trust, after deducting therefrom all costs, counsel fees, charges, and other expenses of the trustee, and his compensation for executing the trust, shall be applied to the payment of the bonds which may be issued under the trust, and the surplus, if any, shall be paid to said railroad company.

Tenth. The supreme court of the State of New York may remove the trustee on the application of the railroad company, reasonable notice being first given to said trustee. The trustee may resign his trust, and be thenceforward discharged from all further duty or obligation in relation thereto: *Provided*, Such resignation, after reasonable notice to the president or secretary of said railroad company, shall be approved by said supreme court. And on the death, removal, or resignation of a trustee, said supreme court may appoint a new trustee, who shall, thereupon, acquire and have all the right, title, interest, and authority under the trust, and be subject to all duties and responsibilities under the same, as fully as though he had been the original trustee and had executed this deed.

Eleventh. Said trustee hereby accepts and covenants and agrees to and with said railroad company faithfully to execute said trust.

In witness whereof, said railroad company has hereto affixed its corporate seal, and caused the same to be subscribed by its president and secretary, and the trustee has subscribed his name and affixed his seal the day and year first above written.

La Crosse and Milwaukee Railroad Company, by—

[SEAL.] N. P. STANTON, *President.*

LOCKWOOD L. DOTY,

Secretary of the La Crosse and Milwaukee Railroad Company.

WILLIAM BARNES, *Trustee.* [SEAL.]

Signed, sealed, executed. and delivered in our presence, as to the La Crosse and Milwaukee Railroad company, by N. P. Stanton, president, and as to William Barnes, the said trustee—

CLARK, B.

J. C. CARY.

Signed, executed, and delivered in our presence, as to Lockwood L. Doty, secretary of said La Crosse and Milwaukee Railroad Company—

EDWARD P. WHALING.

P. M. JOHNSON.

STATE OF NEW YORK, *County of Albany:*

Be it remembered, that on this second day of July, in the year one thousand eight hundred and fifty-eight, before me, the subscriber, a

commissioner in and for said State, appointed by the governor of the State of Wisconsin to take the acknowledgment and proof of the execution of deeds and other conveyances or leases, and of any contract, letter of attorney, or other writing under seal or not, administer oaths, and take and certify depositions to be used or recorded in the State of Wisconsin, appeared Nehemiah P. Stanton, described in and who executed the above instrument in writing, as the president of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the said instrument, as president as aforesaid, freely for the purposes therein stated; and I certify that the said person who made the said acknowledgment is personally known to me to be the individual described in and who executed the said instrument. And the said Nehemiah P. Stanton, being by me duly sworn, says that he is the president of the La Crosse and Milwaukee Railroad Company, the abovenamed corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof, I have hereunto set my hand and seal official, at my office No. seventy-one State street, in the city of Albany, the day and year first above written.

Given under my hand and official seal the day and year above written.

[SEAL.] EDWARD WADE,
Commissioner of the State of Wisconsin in and for the State of New York.

STATE OF NEW YORK, *County of Albany, ss:*

Be it remembered, that on the second day of July, in the year one thousand eight hundred and fifty-eight, before me, the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin to take the acknowledgment and proof of the execution of deeds or other conveyances or leases, and of any contract, letter of attorney, or other writing under seal or not, administer oaths, and take and certify depositions to be used or recorded in the said State of Wisconsin, appeared William Barnes, described in and who executed the above instrument of writing between him, as one of the parties thereto, and the La Crosse and Milwaukee Railroad
400 Company, the other party thereto, and the said William Barnes acknowledged that he execu ed the said instrument freely for the purposes therein stated; and I certify that the person who made the said acknowledgment is personally known to me to be the individual described in and who executed the said instrument.

In testimony whereof, I have hereunto set my hand and seal official, at my office No. seventy-one State street, in the city of Albany, the day and year first above written.

Given under my hand and official seal, the day and year above written.

[SEAL.] EDWARD WADE,
Commissioner of the State of Wisconsin in and for the State of New York.

STATE OF WISCONSIN, *County of Milwaukee, ss:*

Be it remembered, that on this seventh day of July, eighteen hundred and fifty-eight, before me personally appeared Lockwood L. Doty, to me well and personally known to be the person described in and who executed the above instrument in writing, as secretary of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the same freely and as the free act and deed of the said La Crosse and Milwaukee Railroad Company, for the uses and purposes therein mentioned; and the said Lockwood L. Doty, being by me duly sworn, says that he is the secretary of the La Crosse and Milwaukee Railroad Company, the abovenamed corporaton, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal.

[SEAL.] E. MARINER,
Notary Public, Milwaukee County, Wisconsin.

Recorded July 8th, 1858, at 8 o'clock a. m.

401 *Exhibit No. 2.*

Indenture, made the eleventh day of August, one thousand eight hundred and fifty-eight, between the La Crosse and Milwaukee Rail road Company, a corporation created by the legislature of the State of Wisconsin, party of the first part, and William Barnes, of the city of Albany, and State of New York, trustee as hereinafter mentioned, and under and by virtue of an indenture made by and between said corporation and said Barnes, on the twenty-first day of June, one thousand eight hundred and fifty-eight, party of the second part.

Whereas the Congress of the United States, by an act approved June 3d, 1856, entitled "An act granting public lands to the State of Wisconsin, to aid in the construction of railroads in said State," did enact as follows:

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That there be and is hereby granted to the State of Wisconsin, for the purpose of aiding in the construction of a railroad from Madison or Columbus, by the way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to Bayfield; and also from Fond du Lac, on Lake Winnebago, northerly to the State line, every alternate section of land, designated by odd numbers, for six sections in width on each side of said roads, respectively. But in case it shall appear that the United States have, when the line or routes of said roads are definitely fixed, sold any sections or parts thereof granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents to be appointed by the governor

of said State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tier of sections above specified, as much land in alternate sections or parts of sections as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the right of pre-emption has attached as aforesaid, which land thus selected in lieu of those sold and which pre-emption has attached as aforesaid, together with the sections and parts of sections, designated by odd numbers as aforesaid and appropriated as aforesaid, shall be held by the State of Wisconsin for the use and purpose aforesaid : *Provided*, That the lands to be so located shall in no case be farther than fifteen miles from the line of the roads in each case, and selected for and on account of said roads : *Provided further*, That the lands hereby granted shall be exclusively applied in the construction of the road for which it was granted and selected, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever : *And provided further*, That any and all lands reserved to the United States by any act of Congress, for the purpose of aiding in any object of internal improvement, or in any manner for any purpose whatever, be and the same are hereby reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the route of said railroad through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the President of the United States.

SEC. 2. *And be it further enacted*, That the sections and parts of sections of land which by such grant shall remain to the United States, within six miles on each side of said roads, shall not be sold for less than double the minimum price of the public lands, when sold, nor shall any of the said lands become subject to private entry, until the same have been first offered at public sale at the increased price.

SEC. 3. *And be it further enacted*, That the said lands hereby granted to said State shall be subject to the disposal of the legislature thereof, for the purposes aforesaid, and no other, and the said railroads shall be and remain public highways, for the use of the government of the United States, free from toll or other charge upon the transportation of property or troops of the United States.

SEC. 4. *And be it further enacted*, That the lands hereby granted to said State shall be disposed of by said State only in the manner following, that is to say, that a quantity of land not exceeding one hundred and twenty sections, and included within a continuous length of twenty miles of road respectively, may be sold, and when the governor of said State shall certify to the Secretary of the Interior that any twenty continuous miles of either of said roads are completed, then another like quantity of land hereby granted may be sold, and so from time to time until said roads are completed ; and if said roads are not completed within ten years, no further sales shall be made, and the land unsold shall revert to the United States.

SEC. 5. *And be it further enacted*, That the United States mail

shall be transported over said road, under the direction of the Post Office Department, at such price as Congress may by law direct: *Provided*, That until such price is fixed by law, the Postmaster General shall have the power to determine the same. Approved June 3d, 1856.

And whereas the legislature of the State of Wisconsin subsequently passed an act, approved October 11th, 1856, which is in the following words:

"An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust created by an act of Congress entitled 'An act granting public lands to the State of Wisconsin, to aid in the construction of railroads in said State,' approved June 3d, 1856."

The people of the State of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. The La Crosse and Milwaukee Railroad Company is hereby authorized and empowered to survey, locate, construct, complete, and perpetually to have, use, maintain, and operate railroads, with one or more tracks or lines, from the city of Madison, in the county of Dane, and from the village of Columbus, in the county of Columbia, on the most direct and feasible route, by the way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to Bayfield, and shall have, possess, exercise, and enjoy
402 the same rights, privileges, functions, franchises, authority, and immunities with reference to the said routes, or any railroad to be built thereon, as it now possesses and enjoys with reference to any route it is now authorized to occupy, or any railroad built, or to be built, thereon; and there is hereby conferred upon the La Crosse and Milwaukee Railroad Company all the power and authority contained in the charter of said company, and in the acts amendatory thereof, for the purpose of carrying out the objects of this act, and of appropriating and applying the lands hereinafter in this act granted, or their proceeds, to aid in the construction of railroads by this act authorized to be built.

SEC. 2. The said roads shall be constructed on the most direct and feasible routes from Madison to Portage City, and from Columbus to Portage City, and simultaneously, as nearly as practicable, and both of them shall be completed by the last day of December, A. D. 1858. And for the purpose of estimating and selecting lands granted by Congress, the city of Madison is hereby designated as the point of commencement of said road, and the whole of the railroad hereby authorized to be constructed shall be constructed by said La Crosse and Milwaukee Railroad Company within ten years from the 3d day of June, 1856.

SEC. 3. The said La Crosse and Milwaukee Railroad Company shall never set up the defence of usury to any contract in any court whatsoever; it may purchase and own rails, chairs, spikes, engines, tenders, cars, and all other things necessary and useful for the construc-

tion or operation of a railroad, and sell the same, and shall also have power and authority to operate its said roads, or either of them, in connexion with any and all other railroads which may cross, come up to, or connect with the said railroads, or either of them, upon such terms as shall be mutually agreed upon by and between the said companies: *Provided, however*, That the said La Crosse and Milwaukee Railroad Company, in making any such contract as last aforesaid, shall give no preference to one company over any other such company or companies as last above mentioned, but all such companies shall be put upon the same equal terms: *And provided also*, That if the said La Crosse and Milwaukee Railroad Company, and such other railroad company as may desire a running connexion with the same, shall at any time not be able to agree upon the terms of such connexions, then, and in that case, either party may apply to the circuit court of the circuit in which such connexion may be sought, and the said circuit court shall appoint three commissioners, whose duty it shall be forthwith to proceed to examine and adjust the terms on which the said connexion shall exist, and the said award of terms of connexion shall be filed in the office of the secretary of state, and shall be binding on both parties for the term of two years. Such application shall be on not less than ten days' notice in writing, to be given by the party making such application to the adverse party.

SEC. 4. For the purpose of aiding in the construction of the railroads which by this act the said La Crosse and Milwaukee Railroad Company is authorized to construct, all the interest and estate, present or prospective, of this State, in or to any and all the lands granted by the government of the United States to the State of Wisconsin, for the purpose of aiding in the construction of a railroad from Madison or Columbus by way of Portage City to the St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to Bayfield, by virtue of an act of Congress entitled "An act granting a portion of the public lands in the State of Wisconsin to aid in the construction of railroads," approved June 3d, 1856, together with all and singular the rights, privileges, and immunities conferred, or intended to be conferred, by the said act of Congress, are hereby granted to the said La Crosse and Milwaukee Railroad Company: *Provided*, That the said land shall be exclusively applied in the construction of that road for which it was granted and selected, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatever: *And provided further*, That the title to said lands shall vest in the said La Crosse and Milwaukee Railroad Company in the manner following, that is to say: whenever twenty continuous miles of said road shall have been completed so as to admit of running regular trains on the same, the governor of this State shall certify to the Secretary of the Interior the fact that such twenty continuous miles of such roads are completed as aforesaid, then the title to two hundred and forty sections of said lands shall vest in the La Crosse and Milwaukee Railroad Company; and when a second continuous twenty miles of said road shall have been completed so as to admit

of running regular trains of cars on the same, the governor shall certify as before, and thereupon a further quantity of one hundred and twenty sections of said land shall vest in said company, and so from time to time until said roads are completed; and it shall be the duty of the governor so to certify to the Secretary of the Interior whenever such twenty miles are completed so as to admit running regular trains of cars on the same; and the governor of the State shall, in his official capacity, and on behalf of the State, and under the great seal thereof, execute and deliver to the La Crosse and Milwaukee Railroad Company, whenever it shall, by virtue of the provisions of this charter, be entitled to any of said lands, a deed in fee simple of any and all the lands to which said company shall be entitled: *Provided*, That said company shall not sell any of said lands until twenty miles of said road shall be completed so as to admit of running regular trains over the same, and so on, from time to time, so that the sales of lands by said company shall never exceed six sections of land for every mile of road so completed.

SEC. 5. The location and designation of the route and line of the said roads shall be made by the said La Crosse and Milwaukee Railroad Company, and the same shall, from time to time, and as fast as practicable, be reported to the governor of the State. The selection of lands provided for in the act of Congress hereinbefore mentioned, shall be made by such agents as may be appointed by the governor of the State. Such selection, as well as the survey, location, and completion of said roads, and the compensation of such agents, shall be at the cost and charge of said company, without charge of any kind upon the treasury of the State of Wisconsin. Said railroads, which shall be constructed by the application of funds derived from the lands herein granted, shall be and remain public highways for the use of the government of the United States, free from any toll or other charge upon the transportation of property or troops of the United States, and the United States mail shall be transported
403 over said roads under the direction of the Post Office Department as provided in said act of Congress.

SEC. 6. In consideration of the grants, privileges, and franchises herein conferred upon the said La Crosse and Milwaukee Railroad Company for the purposes aforesaid, the said company shall, on or before the first day of March in each year, pay into the treasury of the State such sum as it is by the existing laws of the State required to pay in place of taxes upon its road now constructed, or which it may hereafter construct under the present charter, and in addition thereto it shall pay into the treasury of the State, on or before the first day of March in each year, four per centum on the gross earnings of said road to be built by said company in pursuance of the power and authority conferred by this act, for the year ending on the last day of the preceding December, in place of taxes on that portion of its said railroad so to be constructed; and for the purpose of ascertaining the gross earnings aforesaid, an accurate account of such earnings shall be kept by said company, an abstract whereof shall be furnished by said company to the treasurer of this State, on or before

the first day of February in each year, the truth of which abstract shall be verified by the affidavits of the treasurer and secretary of said company; and for the purpose of ascertaining the truth of such affidavits and the correctness of such abstracts, full power is vested in the governor of this State, or any other person appointed as may be by law prescribed, to examine the books and papers of said company, and to examine under oath the officers, agents, and employés of the said company and other persons, and if any person so examined by the governor, or other authorized person, shall knowingly or wilfully swear falsely concerning the matter aforesaid, every such person is hereby declared to have committed perjury; and for securing to the State the payment of the aforesaid per centum, it is hereby declared that the State shall have a lien upon the railroad of the said company, and upon all other property, estate, and effects of said company, whether real, personal, or mixed, and the lien hereby secured by the State shall take and have precedence of all demands, decrees, and judgments against the said company. The first payment shall be made on the first day of March next after fifty miles of said road shall be completed, and such payment shall be in lieu and in full of all claims of the State for the grant hereby made, and in consideration of such annual payment the said company shall be forever exempt from all assessments and taxes whatever by the State, or by any county, town, city, village, or other municipal authority in the State, (except special taxes for the improvement of streets and sidewalks,) upon all stock in the said La Crosse and Milwaukee Railroad Company, whether belonging to said company or to individuals, or any of its franchises or estate, real, personal, or mixed, held by said company, and necessary for the operation of said railroad; and said lands granted by said act of Congress, and hereby authorized to be conveyed to the La Crosse and Milwaukee Railroad Company, shall be exempt from taxation under and by virtue of the laws of this State for the period of ten years after the passage of this act, unless sooner sold, conveyed, or leased by the said La Crosse and Milwaukee Railroad Company, and the State shall have a prior lien upon the road of said company, and all the appurtenances and stock thereof, for all dues that may accrue to the State from said corporation as herein provided, which lien of the State shall take precedence of all demands, judgments, or decrees against said corporation.

SEC. 7. Within five years after the title of such lands shall become vested in the said railroad company, the same, if any shall remain unsold, shall be offered for sale in limited qualities at fair prices, preference being given to actual settlers.

SEC. 8. The said La Crosse and Milwaukee Railroad Company shall have full power and authority to transport persons and property in boats, vessels, barges, or other water craft, on any navigable water which any portion of their railroad may run to or connect with, and to receive and collect reasonable compensation for the same, and for that purpose may purchase or build and own such vessels, boats, barges, and other water craft as it may require.

SEC. 9. The said La Crosse and Milwaukee Railroad Company shall

be capable in law of taking and holding any lands granted by the government of the United States, or of this State, to aid in the construction of railroads, which shall be conveyed to said company by this act, or by deed, or by operation of law; and may also mortgage or pledge, or otherwise dispose of, all their right, title, claim, or demand of, in, or to any lands, or interest in lands, granted to said company by this act, and in any other estate, real, personal, or mixed, of which they may be seized at the time of execution of such mortgage, or which they may acquire subsequent thereto, in such manner and on such terms as the directors may think proper.

SEC. 10. In case the La Crosse and Milwaukee Railroad Company shall construct the railroad which by this act it is authorized to construct, or any part of it, upon or over any route upon or over which any other railroad company is authorized to construct a railroad, and upon or over which it has previous to the passage of this act actually surveyed or located its line of railroad, it shall be the duty of the La Crosse and Milwaukee Railroad Company to settle with such railroad company upon principles of justice and equity for all its property and rights of property which the said La Crosse and Milwaukee Railroad Company shall take, injure, or destroy, and the latter company shall pay to any such company whose property or rights of property shall be thus taken, injured, or destroyed, whatever the same is reasonably worth, such payment to be made in money, bonds, stock, or lands, or in such other manner as said companies shall mutually agree; and if the said companies cannot mutually agree upon the amount of compensation to be made by the said La Crosse and Milwaukee Railroad Company to such other company for the property and rights of property which said La Crosse and Milwaukee Railroad Company shall so as aforesaid take, injure, and destroy, then, and in that case, each of said companies shall select a disinterested engineer, and the two engineers so selected shall choose a third person, and in case they cannot agree upon such third person, the governor shall appoint such third person, and the three persons so selected shall constitute a board of commissioners whose duty it shall be to
404 ascertain, determine, and award the amount of compensation which the said La Crosse and Milwaukee Railroad Company ought, in justice and equity, to make to such other railroad company for the property and rights of property which shall be so as aforesaid taken, injured, or destroyed.

SEC. 11. This act, and all grants herein contained, shall cease and be void, unless the said La Crosse and Milwaukee Railroad Company shall accept of the same within five days after the passage of this act; and such acceptance shall be by a resolution adopted by the directors of said company, a copy of which, duly certified by the secretary of said company, under its corporate seal, within said period of five days from the passage of this act, shall be deposited in the office of the secretary of state. And in case the said La Crosse and Milwaukee Railroad Company shall violate the provisions of this act, the legislature may repeal this act, and may revoke all and singular the rights and franchises herein conferred, so far as the same has not

been performed and fulfilled, and so far as the rights and privileges hereby granted have not become complete and absolute.

SEC. 12. All the property which the said La Crosse and Milwaukee Railroad Company is authorized to appropriate, take, possess, hold, use, or enjoy, by making payment thereof, as is in this act provided, is hereby declared to be taken for public use, so soon as the said company shall so appropriate, take, possess, hold, or use the same.

SEC. 13. The capital stock of the La Crosse and Milwaukee Railroad Company is hereby increased two million dollars over and above its present capital, and within three months after the passage of this act said company shall open books for subscription to such increased capital stock, after giving at least thirty days' notice thereof in two newspapers, one published in the city of Milwaukee, and one published in the city of Madison. Such books shall be opened in the city of Milwaukee, and shall be kept open for not less than three days, and all persons shall be permitted to subscribe to said stock on the payment to the treasurer of the company of five per cent. of the amount subscribed in cash; but no one person shall be allowed to subscribe for more than two hundred and fifty shares of such stock; and in case the number of shares subscribed shall exceed the amount of two million of dollars, the same shall be reduced to that amount, by deducting such sums as may be necessary pro rata from each of the several subscriptions, and all of the shares of stock so subscribed shall be subject to calls for instalments thereon in like manner as the other stock of said railroad company.

SEC. 14. It is hereby declared that, in the judgment of the legislature of this State, the objects of the corporation named in this act cannot be attained under or by general laws.

SEC. 15. The La Crosse and Milwaukee Railroad Company shall fence its road in parcels, as it shall from time to time operate the same, within one year after it shall commence the operating of any and every such parcel, until the whole of such railroad shall be in a good, proper, and substantial manner fenced throughout the entire extent thereof.

SEC. 16. This act is hereby declared to be a public act, and the same shall immediately after the passage thereof be printed by the State printer, and when thus published shall take effect and be in force.

And whereas the said railroad company, after the passing of the last-mentioned act and on the same day, duly accepted the same by a resolution adopted by the directors of said company, a copy of which, certified by the secretary of said company under its corporate seal, was on the same day deposited in the office of the secretary of state:

And whereas the said railroad company, for the purpose of providing for and securing the payment of its floating debt and for other purposes, had determined before the date of the indenture hereinafter mentioned, dated June 21st, 1858, between said company of the first part, and said Barnes as trustee of the second part, to issue its bonds for a sum not exceeding two millions of dollars in the aggre-

gate, embracing one thousand bonds of one thousand dollars each, fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, with interest warrants or coupons in the usual form attached:

And whereas also the La Crosse and Milwaukee Railroad Company executed and delivered to said party of the second part an indenture, dated on the 21st day of June, A. D. 1858, recorded in the office of the secretary of state of the State of Wisconsin, on the 8th day of July, A. D. 1858, in book of railroad mortgages, on pages 342, 343, 344, 345, 346, 347, 348, by which the said railroad company conveyed to said William Barnes, party of the second part, as trustee for the holders of said bonds as therein particularly specified, all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred (200) miles, including all and singular the several tracts, pieces, or parcels of land which constituted or might thereafter constitute the site of the roadways, turnouts, engine-houses, workshops, depots, and other buildings, and all other lands which might thereafter constitute or be a part of or appertain to said railroad, and also other property, real and personal, and other rights, privileges, liberties, and franchises, as by reference thereto will more fully and at large appear:

And whereas also the said indenture contained a covenant and agreement on the part of the said La Crosse and Milwaukee Railroad Company to make, execute, and deliver to said William Barnes, as trustee as aforesaid, all necessary and proper further conveyances and assurances:

And whereas the said trustee has required the execution and delivery of this further conveyance:

Now, therefore, this indenture witnesseth: That the said La Crosse and Milwaukee Railroad Company, in consideration of the premises, and of the mutual promises herein contained, and the sum of one dollar paid by the said party of the second part to said party of the first part, the receipt of which is hereby confessed and acknowledged, has granted, bargained, sold, conveyed and confirmed, and does by these presents grant, bargain, sell, convey and confirm unto said party of the second part, all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of
405 about two hundred (200) miles, and also the railroad of said company, commencing in the village of Madison, and running from thence by way of Portage City to the St. Croix river or lake, a distance of about two hundred and sixty-eight (268) miles, and also the railroad of said company, commencing in the village of Columbus, and running from thence to Portage City, a distance of about forty (40) miles, a part of which roads have been constructed and are now in full operation, and the residue are in process of construction; and all other railroads built or to be built and constructed by said company, or which they have a right to construct by or under any corporate or other rights, privileges, or franchises heretofore granted or given, or which may be hereafter granted or given to said La Crosse and Milwaukee R. R. Co.

by the legislature of the State of Wisconsin, or from any other source, or in any other manner whatsoever, including all and singular the several tracts, pieces, or parcels of land which now are or hereafter may be or constitute the site of the roadways, turnouts, engine-houses, workshops, depots, and other buildings, and all other lands and real estate which now constitute or may hereafter constitute or be a part of or appertain to said railroads, and including also all and singular the lots, lands, and real estate whatsoever, which the said railroad company now own, or which they shall hereafter acquire by purchase, grant, gift, or otherwise, in the cities of Milwaukee and La Crosse, or in the vicinity of either of said cities, and all improvements made or to be made thereon, and all rights of dockage and wharfage, and all other riparian rights, privileges, and franchises appertaining thereto, for a particular description of which lands already acquired, reference is made to the various deeds of the same to the said company. And also all and singular the superstructure of said railroads, whether now made or to be made hereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroads, whether now built or made or to be built or made hereafter. And also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description, which have already been or may hereafter be procured for or used on said railroads, and all the materials, tools, implements, and utensils, and other personal property which have been or may hereafter be procured for or used in connexion with said railroads. And also all and singular the rights, privileges, liberties, and franchises of said La Crosse and Milwaukee Railroad Company, of every kind and description. And also the said La Crosse and Milwaukee Railroad Company has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm unto said party of the second part all and singular the lands granted or intended to be granted to said railroad company under or by virtue of the act of Congress and the act of the legislature of the State of Wisconsin, hereinbefore mentioned, together with all and singular the hereditaments and appurtenances belonging or in anywise appertaining to the lands and real estate hereby conveyed or intended to be conveyed. And also all and singular the stock, railroad or other bonds, bills of exchange, promissory notes, accounts, causes of action, demands and choses in action of whatsoever nature, which may be owned, or in which the said railroad company may have an interest, on such day as the said railroad company may first make default in the payment of the interest or principal, or any part thereof, which may hereafter become due on any of the said bonds issued or to be issued by said company.

And it is hereby declared to be the intention of the parties to these presents to convey to and vest in said party of the second part all the property, real and personal and mixed, of said railroad company, to be acquired or vested hereafter, as well as that which has been already acquired or vested, together with all the rights, liberties, privileges, and franchises of said railroad company, as fully and

amply as the same might be conveyed if said railroads had already been fully built, constructed, and equipped, and the particular lands granted by the foregoing acts of Congress and the said legislature had already been fully designated, and duly conveyed and duly patented to said railroad company according to the provisions of said acts.

And the said La Crosse and Milwaukee Railroad Company, party of the first part, does hereby covenant, grant, bargain, promise, and agree to and with the said party of the second part, and his successors, grantees, and assigns, to warrant and forever defend the above-described and granted premises, lands, tenements, and every part and parcel thereof, and also all the property, real, personal, and mixed, now vested or acquired, or hereafter to be vested or acquired, and also all the rights, property, real, personal, and mixed, choses in action, privileges, and franchises above conveyed or intended to be conveyed, unto the said party of the second part, his successors, grantees, or assigns, against the said party of the first part, and against all and every other person or persons, States or corporations, lawfully claiming or to claim the same or any part thereof, subject, nevertheless, to all legal lines already existing upon the property and franchises above mentioned.

To have and to hold all and singular the said property, real, personal, and mixed, and choses in action, with the hereditaments and appurtenances, and all and singular the rights, liberties, privileges, and franchises hereby conveyed or intended to be conveyed, subject to the aforesaid existing legal liens, to the aforesaid party of the second part, and his successors and his heirs and assigns forever.

In trust, nevertheless, and upon the trusts, terms, and conditions herein expressed, and also expressed in the said indenture, made and executed by and between said parties on the 21st day of June, A. D. 1858.

First. Until default shall be made in the payment of said bonds, or some of them, or in the payment of the interest thereon, or some part thereof; and the said railroad company shall be suffered and permitted to hold and enjoy said railroads, with all the equipments and all other things appertaining to the same, and to use the same, and to take and receive the profits thereof to its own use, in the same manner as though this deed had not been made.

Second. In case of default for the space of fifteen days shall be made in the payment of any of said interest warrants or coupons as they respectively fall due, or if default for the like period
406 shall be made in the payment at maturity of the principal sum of money mentioned in any of the said bonds, then and in either of said cases it shall be lawful, and said trustee is hereby authorized in his discretion, either in person or by his attorney or attorneys, agent or agents, to enter into and upon, and take possession of, all and singular the railroads, and all the other property, real, personal, and mixed, and choses in action, hereinbefore conveyed, or intended to be conveyed, and to take and receive the income and profits thereof, and to take possession of all books, documents, maps, and papers, relating thereto, and to sell all and singular said railroads, and said

other property, real, personal, and mixed, and choses in action, with all the rights, liberties, privileges, and franchises of said railroad company, either at public or private sale, and to execute and deliver to the purchaser or purchasers deeds and conveyances which shall vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of said trustee and said railroad company of, in, and to the said property, rights, liberties, privileges and franchises, and every part and parcel thereof. But before any sale shall be made at auction, notice of such intended sale shall be published once in each week for three weeks at the least, in two newspapers published in the city of New York, and in a newspaper published in the city of Milwaukee, and should any further notice be required by the laws of the State of Wisconsin, the same shall be given. And in case default shall at any time be made in the payment of the interest money of the bonds then outstanding, or in case default be made in the payment of the principal sum of money mentioned in said bonds, or any of them, at maturity, then and in either of said cases, said trustee, on the written request of the holder or holders of bonds then outstanding to the amount in the aggregate of one hundred thousand dollars, shall proceed to make such sales and conveyances so as above mentioned.

Third. Said railroad company covenants and agrees to and with said trustee, and his successor, that said company will from time to time, during the continuance of the trust, make, execute, cause to be duly recorded, and deliver to said trustee all such further conveyances and assurances, and will do all such further acts and things as may either be necessary or proper for more effectually vesting in said trustee all such right, title, interest, or estate, both legal and equitable, as said railroad company now has or may hereafter acquire of, in, or to all and every part of the property hereby conveyed or intended to be conveyed, together with the rights, liberties, privileges and franchises aforesaid.

Fourth. Said railroad company will cause this indenture to be duly recorded in all proper places, and will do whatever else may be necessary or proper to give full effect to this conveyance, and will pay and discharge all taxes, charges, liens, and other burdens which either exist or may hereafter arise or be imposed upon the property hereby conveyed or intended to be conveyed, and the trustee assumes no duty or responsibility on these subjects or any of them, nor in relation to any other matter or thing, except as herein provided.

Fifth. The trustee is hereby authorized to appoint all such attorneys, counsellors, clerks, and other agents, in addition to those provided for in said original indenture, executed by and between said parties on the 21st day of June, 1858, and recorded as above mentioned, as he may deem proper in the execution of the trust, and shall not be answerable for the defaults or other misconduct of said attorneys, counsellors, clerks, or other agents, unless chargeable with culpable negligence in their appointment, nor shall the trustee be responsible for anything short of gross negligence or wilful default in the discharge or omission to discharge of any of his duties.

And it is hereby expressly declared, covenanted, and agreed by the said railroad company, that the provision herein contained for the security of said bonds are in addition to the provisions, liens, and securities made or created in that behalf in the said original deed of trust or mortgage, executed by and between said parties, bearing date June 21st, 1858, and recorded as aforesaid; and that all such original provisions, liens, and securities are to remain in full force and effect; and also that all provisions in said original deed of trust or mortgage for the benefit or protection of said trustee are to remain in full force and effect, and are to be applicable to all trusts and actions or omissions to act under this indenture, in the same manner as if all the provision thereof had been inserted and incorporated in said original trust deed or mortgage.

Said trustee hereby accepts and covenants and agrees to and with said railroad company faithfully to execute said trust.

In witness whereof, said railroad company has hereto affixed its corporate seal, and caused the same to be subscribed by its president and secretary, and the trustee has subscribed his name and affixed his seal the day and year first above written.

[SEAL.] La Crosse and Milwaukee Railroad Company, by—
N. P. STANTON, *President.*
LOCKWOOD L. DOTY, *Secretary.*
WILLIAM BARNES, *Trustee.* [SEAL.]

Signed, sealed, executed, and delivered in our presence, as to the La Crosse and Milwaukee Railroad Company, by N. P. Stanton, president—

BYRON KILBOURN.
T. W. BEAVER.

Signed, executed, and delivered in our presence, as to Lockwood L. Doty, secretary of said La Crosse and Milwaukee Railroad Company—

EDWARD P. WHALING.
T. W. BEAVER.

Signed, sealed, executed, and delivered in our presence, as to William Barnes, the said trustee—

JOHN G. WHITE.
ISAAC EDWARDS.

407 STATE OF WISCONSIN, *County of Milwaukee, ss:*

Be it remembered, that on this twenty-fourth day of August, eighteen hundred and fifty-eight, before me, personally appeared Nehemiah P. Stanton, described in, and who executed, the above instrument in writing as the president of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the said instrument as president as aforesaid, freely for the purposes therein stated, and I certify that the said person, who made the said acknowledgment, is personally known to me to be the individual described in, and who executed, the said instrument. And the said Nehemiah P. Stanton, being by me duly sworn, says that he is the president of the La Crosse and Milwaukee Railroad Company, the

abovenamed corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof, I have hereunto set my hand and seal official, at my office, No. Third street, in the city of Milwaukee, the day and year above written.

Given under my hand and official seal the day and year above written.

[SEAL.] EDWARD P. WHALING,
Notary Public, Milwaukee County, Wisconsin.

STATE OF WISCONSIN, *County of Milwaukee, ss:*

Be it remembered, that on this 24th day of August, eighteen hundred and fifty-eight, before me personally appeared Lockwood L. Doty, to me well and personally known to be the person described in, and who executed, the above instrument in writing as secretary of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the same freely and as the free act and deed of the said La Crosse and Milwaukee Railroad Company, for the uses and purposes therein mentioned; and the said Lockwood L. Doty, being by me duly sworn, says that he is the secretary of the La Crosse and Milwaukee Railroad Company, the abovenamed corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof, I have hereunto set my hand and seal official, at my office, No. Third street, in the city of Milwaukee, the day and year above written.

Given under my hand and official seal the day and year above written.

[SEAL.] EDWARD P. WHALING,
Notary Public, Milwaukee County, Wisconsin.

STATE OF NEW YORK, *County of Albany, ss:*

Be it remembered, that on the sixteenth day of August, in the year one thousand eight hundred and fifty-eight, before me, the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin to take the acknowledgment and proof of the execution of deeds or other conveyances or leases, and of any contract, letter of attorney, or other writing, under seal or not, administer oaths, and take and certify depositions to be used or recorded in the said State of Wisconsin, appeared William Barnes, described in, and who executed, the above instrument of writing between him, as one of the parties thereto, and the La Crosse and Milwaukee Railroad Company, the other party thereto, and the said William Barnes acknowledged that he executed the said instrument freely for the purposes therein stated; and I certify the said person who made the said acknowledgment is personally known to me to be the individual described in, and who executed, the said instrument.

In testimony whereof, I have hereunto set my hand and seal official, at my office, No. seventy-one State street, in the city of Albany, the day and year first above written.

Given under my hand and official seal the day and year above written.

[SEAL.] EDWARD WADE,

Commissioner of the State of Wisconsin in and for the State of New York.

Recorded Sept. 1st, 1858, at 8 o'clock a. m.

408 I, George F. Betts, the commissioner named in the annexed commission, do hereby certify and return to the said commission, that under and in pursuance thereof, I caused A. W. Greenleaf, the witness therein named, to appear before me, at my office in the city of New York, on the 19th and 23d days of May, A. D. 1865, and did there first publicly administer an oath to said witness that the answers given by him to the interrogatories proposed to him should be the truth, the whole truth, and nothing but the truth; that I did then propose to said witness each of the annexed interrogatories and cross-interrogatories, and did reduce to writing the answers of said witness to each of the same, which answers are hereto annexed; that the witness subscribed his said examination and the exhibit hereto annexed, and that I have retained this examinationfor the purpose of sealing the same and depositing it in the post office, addressed to the clerk of the court for which the same was taken.

Witness my hand and seal this 23d day of May, A. D. 1865.

[L. S.] GEO. F. BETTS, *Commissioner.*

Answers of A. W. Greenleaf, a witness produced before George F. Betts, the commissioner above named, to the interrogatories and cross-interrogatories propounded to him as recited in the annexed commission.

To the first interrogatory. A. W. Greenleaf; age, 38; birth day, to-day; stock broker; reside in Westchester co., in the State of New York; I do know the defendant, Selah Chamberlain.

To the second interrogatory. Same business as now; a stock broker; I was.

To the third interrogatory. Such a note was left with us for collection; amount exactly $2,000, I believe; bonds of the La Crosse and Milwaukee Railroad; my impression is they were called third mortgage bonds; were left with us as collateral to *to* said note. I
409 think the amount was four hundred thousand dollars.

To the fourth interrogatory. When the note matured the bonds were sold by us.

To the fifth interrogatory. They were sold by private sale; no public notice was given.

To the sixth interrogatory. I can't remember, without consulting my books, with certainty who purchased any of them; I will copy from my books, and produce a list of the parties who purchased said bonds, the amount purchased by each, and the price each paid. This is the copy marked Exhibit A. G. F. B.

To the seventh interrogatory. My impression is I did, with some officers, probably directors, but I can't name more particularly. No objections were made to the sale, nor any steps taken by any party to prevent the sale.

To the eighth interrogatory. There was no opposition bidding; the sale was made in the office of Meigs & Greenleaf; I couldn't say who was present, even that I was present myself: the sale was made by private negotiation, but all closed at one time.

To the ninth interrogatory. I don't know.

To the tenth interrogatory. About 20 years in banking, and stock business most of the time.

To the eleventh interrogatory. I had known the La Crosse and Milwaukee Railroad Company and its securities for some time prior to June, 1858; my opinion would be that in June, 1858, said co.'s pecuniary circumstances were well known among business and moneyed men in the city of New York; some of the securities of the co. had a marketable value in the city, but not well established, be-
410 cause subject to great fluctuations from day to day; and some of their securities had no marketable value at all, or only nominal.

To the twelfth interrogatory. I think the third mortgage bonds had no marketable value; they were never bought or sold at the stock exchange; I don't think they were generally known in market.

To the thirteenth interrogatory. As brokers, we would not have lent any money on the bonds; I can't say whether they had any real money value or not; I don't remember any other sale of them than the one I have above testified to, where $400,000 of bonds sold for $20,000 in cash. We may have made previous sales, but if so, they have escaped my recollection. The bonds had no place at any stock board in the city; I don't know whether they were disposed of in business circles or not, nor what (if anything) was the usual or ordinary amount asked and received for them.

To the fourteenth interrogatory. The bonds were not generally known, but I could not say whether or not there was a general distrust of them; the sale of them was confined to a few persons; they were not generally dealt in; I don't think we could have sold the bonds in open market.

To the last interrogatory. I cannot, except that upon reflection and referring to my books I remember that the purchasers of the bonds were mostly from Albany, and formed a party which was made up without much, if any, agency on our part.

To the first cross-interrogatory. We did considerable business for some of the directors; Mr. Noxon was one, I think; Mr. Gunnison, I think, Mr. Alden, I think; that's all I can think of; I don't remember what other parties, if any; but we were not closely connected with them or any directors in our business matters.

To the second cross-interrogatory. I was not.

411 To the third cross-interrogatory. I have answered nay to the last interrogatory.

To the fourth cross-interrogatory. No; not to my knowledge.

To the fifth cross-interrogatory. They did not.

To the sixth cross-interrogatory. I did not.

To the seventh cross-interrogatory. We sold the bonds to the only parties we knew likely to buy them, and in my judgment to the best advantage the market afforded, as the bonds were so little known, and not dealt in at the board; I consider this to be the due course of business in like cases. No one gave us orders to dispose of them in any particular way; I think the terms of the sale and the names of the purchasers were known to the officers of the road at the time of the completion of the transaction.

To the eighth cross-interrogatory. It did not.

To the ninth cross-interrogatory. I do not know any such fact or circumstance.

A. W. GREENLEAF.

Subscribed and sworn to before me.

GEO. F. BETTS, *Commissioner.*

Memorandum of sale of $400,000 La Crosse and Milwaukee R. R. 3d m't'g bonds, made by Meigs & Greenleaf, on the 7th day of January, 1859. Entry of sale on our books in the handwriting of Chas. A. Meigs:

$70,000 bonds at 5⅛, to S. H. Alden.
75,000 bonds at 5⅛, to J. M. Lovett.
45,000 bonds at 5⅛, to S. W. Odell.
40,000 bonds at 5⅛, to E. A. Billing.
70,000 bonds at 5⅛, to S. Perry.
40,000 bonds at 5⅛, to W. Watson.
20,000 bonds at 5⅛, to J. O'Brien.
20,000 bonds at 5⅛, to H. G. Gilbert.
20,000 bonds at 5⅛, to J. M. Lovett.

$400,000

All sold at 5⅛.

A. W. GREENLEAF.

Exhibit A, G. F. B.

412 UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, A. Scott Sloan, clerk of the circuit court of the United States of America for the district of Wisconsin, do herby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom, and of the whole therof, now on file and remaining of record in my office.

In testimony whereof, I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukee, in the said district of Wisconsin, this 10th day of May, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the said United States the eighty-ninth.

[L. S.] A. SCOTT SLOAN, *Clerk.*

413 UNITED STATES OF AMERICA, *District of Wisconsin, ss:*
The President of the United States of America to George F. Betts, esq., New York city, greeting:

[L. S.] Know ye that in confidence of your prudence and fidelity you have been appointed, and by these presents you, or any one or more of you, are invested with full power and authority to examine A. W. Greenleaf on his corporal oath as a witness in a cause depending in the circuit court of the United States for the district of Wisconsin, wherein Frederick C. James and others are complainants, and the Milwaukee and Minnesota Railroad Company *et al.* are defendants, on the part of the complainants, upon the interrogatories annexed to this commission; and therefore you are hereby commanded that you, at certain days and places to be appointed by you for that purpose, do cause the said A. W. Greenleaf to come before you, and then and there examine on oath upon the said interrogatories, and that you take such examination and reduce the same into writing, and return the same annexed to this writ, closed up under your seal, into the said circuit court of the United States, before the judge thereof, with all convenient speed.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at the city of Milwaukee, in said district, this tenth day of May, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the United States the eighty-ninth.

A. SCOTT SLOAN, *Clerk.*

414 *Rules.*

On the receipt of the commission made out as aforesaid by any one of the commissioners named, he shall give notice to the other commissioners named therein of the time and place of taking the depositions, if possible; and if any of the commissioners are absent at the execution of said commission, any one or more present may proceed to execute the same (unless otherwise expressly directed therein) as if all were present; but they must certify that those absent have been duly served with notice of the time and place of executing said commission or the reasons for their not being so notified.

The persons to whom such commission shall be directed, or any one or more of them, unless otherwise expressly directed therein, shall execute the same as follows:

First. They or any of them shall publicly administer an oath to the witnesses named in the commission that the answers given by such witnesses to the interrogatories proposed to them shall be the truth, the whole truth, and nothing but the truth.

Second. They shall cause the examination of each witness to be reduced to writing, and to be subscribed by him, and certified by such of the commissioners as are present at the taking of the same.

Third. If any exhibits are produced and proved before them, they shall be annexed to the depositions to which they relate, and shall in like manner be subscribed by the witness proving the same. (This sec-

tion must be understood to refer to such papers as can be produced upon the examination.) If the paper referred to be a record not subject to the control of the party or the commissioners, it will be sufficient to annex a copy, and the original may be produced on the trial, separate from the commission.

Fourth. The commissioner or commissioners shall subscribe each sheet of the depositions and annex all the depositions and exhibits to the commissions upon which the return shall be indorsed, and shall close them up under their or his seals, and shall address the same when so closed to the clerk of the court from which the commission issued, at his place of residence, with the style of the suit.

Fifth. If there is or is not a direction on the commission to return the same by mail, they or he shall immediately deposit the packet so directed in the nearest post office.

Sixth. If there be a direction on the commission to return the same by an agent of the party who sued out the same, the packet so directed shall be delivered to said agent.

415 Circuit court of the United States in and for the district of Wisconsin.

FREDERICK P. JAMES, ABRAM M. BREWER, E. Bradford Greenleaf, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, and J. Howard Mitchell
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company, and the La Crosse and Milwaukee Railroad Company, and Selah. Chamberlain.

Interrogatories to be propounded to the witness A. W. Greenleaf, esq., under and by virtue of the commission to be issued in pursuance of the within rule for a commission in the above-entitled cause:

416 First int. What is your name, age, and occupation? Where do you reside? Do you know the defendant, Selah Chamberlain?

Second int. What was your business in the fall and winter of 1858? Were you at that time a member of the firm of Meigs & Greenleaf, of New York city?

Third int. Did the firm of Meigs & Greenleaf have deposited with them in the fall or winter of 1858, or hold a note executed by the La Crosse and Milwaukee Railroad Company to Selah Chamberlain for $20,000 or thereabouts? If yea, were any collaterals deposited or left with said note? And if yea, what was the amount of said collaterals and what their character?

Fourth int. If you answer the last interrogatory by saying that there was left or deposited with said note as collateral a quantity of bonds of said railroad company, state whether said firm of Meigs & Greenleaf made any disposition of said bonds, and what disposition of them.

Fifth int. Were said bonds so left or deposited with said note sold? If yea, was the same at public or private sale? Was public notice of said sale given, and if given, how and in what manner? Was notice of said sale given by publication of the notice in any newspaper in the city of New York?

Sixth int. Who became the purchaser of said bonds? Please make out and attach as an answer to this interrogatory a list of the parties who purchased or obtained said bonds, giving the name of each purchaser and amount of bonds purchased by each, and the price paid by each.

417 Seventh int. Had you, prior to such sale, seen or conversed with any officer or officers of said railroad company about said bonds or the sale of them, and with what officer or officers? Did said officers or any officer of said company make any objection to said sale or take any steps to prevent the said sale? State all that was said between you and the officers of said company about said bonds.

Eighth int. Was there any opposition bidding at said sale of said bonds? State when said sale was made, who was present, and how and in what manner the sale was made.

Ninth int. State whether or not the officers of the said railroad company made any effort, and if so, what effort to pay at maturity the said $20,000 note.

Tenth int. How long have you resided in the city of New York? During the time you have resided there have you been engaged in business, and what kind of business?

Eleventh int. Had you for some time prior to June, 1858, known of the La Crosse and Milwaukee Railroad Company, or the securities of that company? If yea, state whether or not in June, 1858, the said railroad company's pecuniary circumstances were well known among business and moneyed men of the city of New York. State whether or not at that time the securities of said company had a well established market value in that city.

Twelfth int. Were the so-called third mortgage bonds of the said railroad company ever considered or reputed a valuable security? What was the general or universal opinion among business men in New York as to the real value of the so-called third mortgage bonds of that company?

418 Thirteenth int. Had said bonds any real money value? What was the highest price in cash which you have known said third mortgage bonds to sell for in New York city? Did said third mortgage bonds have any place at any of the stock bonds in said city? Were said bonds sold or disposed of in business circles as bonds having any real value? What was the usual or ordinary amount asked and received for said bonds?

Fourteenth int. State whether or not there was not among business men in general distrust of said third mortgage bonds. Did said bonds pass from hand to hand among business men generally like other bonds offered for sale in New York city? Were or were not the sales of said bonds confined to a few parties?

Lastly. Can you set forth any other matter or thing which may be of benefit to either of the parties to this action? If yea, set forth the same fully and at large in your answer to this interrogatory.

FINCHES, LYNDE & MILLER,
Sol'rs for Compl'ts.

First cross-int. Were you not, in the fall and winter of 1858, closely connected in your busiuess matters with the directors of the La Crosse and Milwaukee Railroad Company, or some of them, and which of them, and certain other parties operating with those directors in the affairs of that company?

419 Second cross-int. Was not your office in Exchange Place considered the headquarters of the La Crosse and Milwaukee Railroad Company, or those intrusted in the affairs of that company, the directors and others, and of Stephen H. Allen, Seth R. Foster, and Selah Chamberlain?

Third cross-int. If you answer yea to the last interrogatory, will you state whether you were not, during that period, and for a year before that, receiving very large commissions as a broker from those directors, as well as from Stephen H. Alden and others connected with operations in the securities of the La Crosse railroad.

Fourth cross-int. Was you not known in the stock board as representing the La Crosse Railroad Company, and as the largest dealer in its securities, and operating generally for the parties known as the La Crosse clique?

Fifth cross int. Did not your relations with the directors of the La Crosse company enable you to know their schemes and intentions with regard to the affairs of the company generally?

Sixth cross-int. Did you, in the fall or winter of 1858, know or suspect the directors and the parties operating with them to be engaged in any fraudulent transactions with the securities of the said company?

Seventh cross-int. Were the bonds deposited as collateral security to the twenty thousand dollar note of Chamberlain disposed of by Meigs & Greenleaf in the due course of business in like cases? If not, state in what particular different; and why and by whose order the same was so differently disposed of.

Eighth cross-int. Did the note to which those bonds were held as collateral require any other or different notice to be given of the sale of the collaterals than was given by you? If yea, state why said notice was not given, and by whose order or direction it was omitted.

420 Ninth cross-interrogatory. Did you know, at the time you or Meigs & Greenleaf disposed of said bonds so held as collateral to said note to Chamberlain, any fact or circumstances which tends to show that these bonds were disposed of fraudulently or with intent to defraud any party or person? If yea, set the same forth fully, and state who was responsible for such fraud, and by whose order or direction it was committed, and by whom and how committed.

MATT. H. CARPENTER,
Sol. for the Milwaukee and Minnesota Railroad Company, Defendant.

421 *Deposition of Austin Gunnison.*

In the circuit court of the United States of America for the district of Wisconsin, in equity.

FREDERICK P. JAMES, ARRAM M. BREWER, E. Bradford Greenleaf, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, and J. Howard Mitchell

vs.

THE MILWAUKEE AND MINNESOTA RAILROAD Company, The La Crosse and Milwaukee Railroad Company, and Selah Chamberlain.

Depositions of witnesses produced, sworn, and examined in the above-entitled cause, on the part of the complainants, before Francis Bloodgood, one of the examiners of said court, at his office in the city of Milwaukee, pursuant to rule No. 67 in equity, and the rules and practice of said court.

DECEMBER 21ST, 1864, *at* 10 *o'clock a. m.*

Pursuant to order and notice the complainants appeared before said examiner, by H. M. Finch, esq., their counsel, and the defendants, the Milwaukee and Minnesota Railroad Company, by Matt. H. Carpenter, its counsel. The following proceedings were had:

The complainants called as a witness in their behalf Austin Gunnison, who being by the examiner first duly sworn, did depose and say to oral questions put him by the complainants' counsel:

My name is Austin Gunnison. I am about thirty years of age. I reside in Milwaukee.

1 ques. What has been your occupation for the past two years?

Ans. I have been in the commission business a part of the
422 time. A part of the time engaged in the litigation of the Milwaukee and Minnesota Railroad Company.

2 ques. Have you been one of the active parties engaged in that litigation for the past two years?

Ans. It may be called so.

3 ques. Have you attended the past two sessions of the legislature of the State of Wisconsin on behalf of the said Milwaukee and Minnesota Railroad Company?

(Objected to as irrelevant and immaterial by Mr. Carpenter, of counsel.)

Ans. I have; partially on behalf of the Milwaukee and Minnesota Railroad Company, and partially for other purposes.

4 ques. Have you for the past two sessions of the legislature of the State of Wisconsin been the active party, or one of the active parties, for the defendant, the Milwaukee and Minnesota Railroad Company, in watching the interests of that company, or securing legislation for that company, or in defeating, or attempting to defeat, legislation that might in any way affect the interests of said company in said legislature?

(Objected to as before.)

Ans. I have been there for the purpose of representing the Milwaukee and Minnesota Railroad Company, amongst other things, as I have before stated, aiding and securing the passage of acts on behalf of that and other interests, and to oppose the passage of any bills injurious to that company.

5 ques. Were you paid for your services in and about said business by any party or parties connected with the defendants, and if so, by whom?

(Objected to as before.)

Ans. I think I never was paid anything for the labor there.

6 ques. Do you know whether you was or not?

(Objected to as before.)

Ans. I mean to state positively that I was not by the Milwaukee and Minnesota Railroad Company. I don't know as I understood the form of the question. It is re-read to the witness, and he continues: I think I have answered the question fully.

7 ques. At whose request, or upon whose suggestion, did you attend or consent to attend the said sessions of the said legislature?

(Objected to as before.)

Ans. I don't recollect.

423 8 ques. Have you a good memory?

Ans. In some things very good, others not.

9 ques. How long did you remain in Madison for the purpose of attending on the session of the legislature in the winter of 1863?

(Objected to as before.)

Ans. I don't remember.

10 ques. Were you there more than one week?

Ans. I was.

11 ques. How many weeks or about how many?

(Objected to as before.)

Ans. I should think about five or six weeks, as near as I can recollect.

12 ques. And do you now state that you cannot recollect the name of a single person or party for whom you acted during that whole period of about six weeks, in and about legislation for or against the Milwaukee and Minnesota Railroad Company?

(Objected to as before.)

Ans. I don't state so.

13 ques. Can you give the name of any person or party for whom, or at whose request or suggestion, you went to Madison to look after the interest of the said Milwaukee and Minnesota R. R. Co. in said legislature?

(Objected to as before.)

Ans. The party I went there to represent was the Milwaukee and Minnesota R. R. Co. I went after consulting with some of the members of the board of directors of that company—I think now either Mr. Fleming, Mr. A. C. Gunnison, one or both of them, but I cannot give the time or circumstances.

14 ques. What then did you mean by your answer to the seventh

interrogatory when you were asked "At whose request, or at whose suggestion, did you attend the sessions of said legislature," you answered, "I don't recollect?"

(Same objection as before.)

Ans. I do not now recollect who suggested the going to Madison in the case. I know it was talked over: I, myself, might or might not have suggested it.

15 ques. Who paid your expenses?

(Same objection as before.)

Ans. I paid my own expenses.

424 16 ques. Have they been repaid to you by anybody? And if so, by whom?

(Same objection as before.)

Ans. They have not.

17 ques. Has any person or party agreed to repay you those expenses? And if so, whom?

(Same objection as before.)

Ans. There is no positive agreement.

18 ques. Is there an understanding, or an arrangement, or an implied agreement that any party, and if so, who, is to repay said expenses?

(Same objection as before.)

Ans. There is an understanding that the Milwaukee and Minnesota R. R. Co. will pay such expenses, but no definite arrangement.

19 ques. Were you in the winter of 1863 a stockholder in the Milwaukee and Minnesota R. R. Co.?

(Same objection as before.)

Ans. I was.

20 ques. How much stock at this time did you own in that company?

(Same objection as before.)

Ans. I can't tell.

21 ques. About what number of shares?

(Same objection as before.)

Ans. I can't tell; nor can I answer any more definitely than I have.

22 ques. Did you own fifty shares at that time?

(Same objection as before.)

Ans. I might have owned fifty shares at that time, and might not. I can't recollect. I have had repeated transactions in the stock, owning some at all times within the last two years.

23 ques. Are you to-day an owner of any stock of that company?

(Same objection as before.)

Ans. I am.

24 ques. How many shares?

(Same objection as before.)

Ans. I cannot now state how many I have.

25 ques. Can you, by the examination of any books or memoranda in your possession, or under your control, or from any shares

425 of stock in your possession, state the number of shares which at the present time you own or have the possession of?

(Same objection as before.)

Ans. I could ascertain very easily how many shares I have possession of; I expect a contingent interest in other stock that I have contributed to purchase. But how much stock I own, other than that I have in my possession, I can't state.

26 ques. With whom are you interested or have you a contingent interest in said stock?

(Same objection as before)

Ans. Mr. A. C. Gunnison.

27 ques. What number of shares of that stock, or about what number, is included in that contingent interest?

(Same objection as before.)

Ans. I cannot state what amount I have an interest in. It is not definitely agreed upon. There is only an understanding that I shall have a portion sufficient to compensate me for my contribution of money to purchase stock.

28 ques. Is that agreement in writing?

(Same objection as before.)

Ans. It is not. It is an understanding, as I have stated.

29 ques. From what party or parties has this stock, for the purchase of which you have contributed a portion of money or means to be purchased, been purchased?

(Same objection as before.)

Ans. I suppose it has been purchased. I don't know of whom it was purchased.

30 ques. What were the number of shares or about the number of shares purchased?

(Same objection as before.)

Ans. I don't know.

31 ques. At what rate per share was the purchase made?

(Same objection as before.)

Ans. I don't know that.

32 ques. Who made the purchase?

(Same objection as before.)

Ans. I suppose Mr. A. C. Gunnison.

426 33 ques. When were they made?

(Same objection as before.)

Ans. I have no personal knowledge whatever.

34 ques. Have you paid your proportion, or furnished the means to pay it?

(Same objection as before.)

Ans. I have furnished a part of the means, as I suppose, but what proportion to the whole amount used to purchase stock that has been purchased by Mr. Gunnison during the last two or three years I have no idea.

35 ques. Have you been interested in the purchase of stock of the Milwaukee and Minnesota Railroad Company with A. C. Gunnison, of New York, for the last two years?

(Same objection as before.)

Ans. I will state the whole thing, so far as I know or understand.

I have contributed within the last three years to a great extent my time, and several thousand dollars, the precise amount I cannot state, in and about the litigation of the Milwaukee and Minnesota Railroad Company, and in the purchase of its stock, and to a great extent have left the purchase of the stock in the hands of Mr. A. C. Gunnison, he being better able to purchase in New York, where a great deal of it was held; while what I have done personally of services has been in this State, at Madison and Milwaukee, in copying papers, &c. I do not know of any definite amount of stock, or indeed any particular stock or purchase, that I have an interest in with Mr. A. C. Gunnison. He holds a large amount of stock, as I understand it; holds and controls, with his friends, a majority of the Milwaukee and Minnesota Railroad Company stock. I expect at some future day to have a settlement with Mr. A. C. Gunnison, and get my share or proportion, whatever it may then be shown to be, but what amount it will be, or how I will get it, I cannot tell, as there is not now any definite understanding whatever as to the amount my interest is or is to be. I have not the possession of the stock, as between me and Mr. A. C. Gunnison, and have no personal knowledge as to who has possession of it. Since answering a previous question I have ascertained, by looking, that I have in my possession thirty-seven shares, of one hundred dollars each, of the Milwaukee and Minnesota Railroad Company stock.

427 36 ques. From whom did you purchase the thirty-seven shares, and when?

(Same objection as before.)

Ans. A part of it, Chas. H. Wheeler, and of Price Brothers. This within the last sixty days. The balance of it—in that I have—I have had for some time, and I don't know from whom I purchased it. It has been transferred and changed around.

37 ques. What did you pay for that?

(Same objection as before.)

Ans. I paid Mr. Wheeler twelve cents cash, I believe—that is, on the nominal value. I don't recollect exactly what I paid Price. I think about the same.

38 ques. Is the A. C. Gunnison you have spoken of your brother?

Ans. He is not. I think he is what is technically called a second cousin.

39 ques. Is the A. C. Gunnison you have referred to the one who was formerly a director in the Milwaukee and La Crosse Railroad Company?

(Same objection as before.)

Ans. I suppose he is.

40 ques. Have you been familiar with the affairs of the Milwaukee and Minnesota Railroad Company for the past two years or any part of that time, and have you been an active party in carrying on that litigation?

(Same objection as before.)

Ans. I have devoted a good share of my time to it; am necessarily somewhat familiar with it.

41 ques. When did you make your first purchase of or become interested in the stock of the Milwaukee and Minnesota Railroad Company?

(Same objection as before.)

Ans. I think in the fall of 1861 I contributed first to the carrying on of the litigation, which was before (some time before) the purchasing of the stock referred to in previous answers. For some months after my first contribution the suit was conducted on behalf of A. Flemming, stockholder, in the name of the Milwaukee and Minnesota Railroad Company, for the purpose of obtaining its rights. Mr. Sage, its then president, and others of his company, directors as I understood it, striving in the mean time to crush out the organization. It was considered absolutely necessary, by myself and others who represented the Flemming or stockholders' interest, to get control of the organization, and thereby, having increased power to protect its rights and the rights of its stockholders in the proceedings which it then seemed necessary to take, to protect those rights. To do this it became necessary to purchase or control a majority of the stock of the company, and thus elect a board of directors who would protect the interests of the company.

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For these reasons it was at once resolved to purchase and control a majority of the stock, and Mr. Flemming, or those who were working with him, at once went to work buying or controlling the stock, and, as I understand it, succeeded in doing it. I bought no stock till after the litigation commenced. All the stock I have ever had any interest in, I acquired subsequent to the commencement of the litigation.

I never had any interest in the stock till after Mr. Flemming filed his petition in the second mortgage foreclosure case for leave to defend in that case.

42 ques. Who became, under this arrangement, the principal managers and active parties in the litigations?

(Same objection as before.)

Ans. There was no change in the active management of the Flemming interest that I know of until after a new election was had in May, 1862, when the board of directors and officers were elected, representing, as I understand it, the stockholders' interest in opposition to Mr. Sage and his co-workers, which board of directors and officers then took charge of the affairs of the company, and of its litigation. The board then elected consisted, as near as I can recollect, of Moses Kneeland, director and president, Harrison Ludington, N. G. Van Schaack, A. C. Gunnison, Stoddard Judd, A. Flemming, Henry E. Weed, and myself and some other one—who, I don't now recollect.

43 ques. What was the highest price, to your knowledge, paid in cash for the stock purchased as stated by you to obtain the control of the majority of the stock of said company?

(Same objection as before.)

Ans. Of my own knowledge I cannot state, but I understood from Mr. A. C. Gunnison, I think, that he had paid as high as thirty cents for some.

429 44 ques. What was the lowest price paid for any of that stock?

(Same objection as before.)

Ans. Of my own knowledge I don't know.

45 ques. Do you know by the statements of any of the directors of said company?

(Objected to as above, and that it calls for hearsay testimony.)

Ans. As I understand it and recollect, this stock was purchased before the new board was elected.

Recess till 2 o'clock p. m., when the parties appeared as before, and the said witness answered as follows:

46 ques. Do you know from the statements of any of the directors of Milwaukee and Minnesota Railroad Company what was the lowest price paid?

(Objected to as before, and because it calls for hearsay testimony.)

Ans. I think Mr. A. C. Gunnison has told me that he has purchased some of the stock as low as six cents, which purchase was made about the time he first commenced purchasing it. I was very low then, much lower than it has been at any time since.

47 ques. State whether this stock was purchased by a combination of several parties, each contributing a certain specified amount, or any amount, or whether each individual purchased on his own account.

(Same objection as before.)

Ans. I have before stated that it was determined by the parties who were represented by the Flemming or stockholders' proceedings, or acted with that proceeding, that they should buy or control a majority of the stock, for the purposes before mentioned, viz , to get control of and be able to defend the organization; and the value of the stock being a subordinate consideration at that time, it was not agreed or understood, nor did any one contribute any certain amount to buy any certain amount of stock. And the money was put in there to defend the company, and the purchase of the stock was a mere incident to this undertaking. This was so, so far as I concerned, or known of others.

48 ques. State who were the parties whom you refer to as being the parties who were represented by the Flemming or stockholders' proceeding.

(Same objection as before.)

Ans. As I understand it, all of the bona fide stockholders of the Milwaukee and Minnesota Railroad Company who have or had
430 no greater opposing interest, but all of such stockholders did not contribute to the conducting of the litigation represented by Flemming.

49 ques. Who were the principal parties engaged in the buying up of the stock?

(Same objection as before.)

Ans. I have seen no party complete any absolute transactions, and I cannot swear positively.

50 ques. Was A. C. Gunnison one of the largest buyers of the stock?

(Same objection as before.)

Ans. I understand that he has been a purchaser of the stock; to what extent, I am not informed.

51 ques. From whom do you understand it? State the names of all who had told you?

(Same objection as before.)

Ans. I can't state who had told me; Gunnison himself probably has told me.

52 ques. State from what party or parties the stock so bought was purchased, so far as the same is within your own knowledge; and if you have heard from the statement of any officer, or director, or stockholder of the Milwaukee and Minnesota R. R. Co., state the same as far as you have heard it from any of them?

(Objected to as above, and especially as to hearasy.)

Ans. I have before stated that I have no personal knowledge of the purchase or completion of the purchase of the stock above referred to; but I have understood from conversations had while in New York at different times with Mr. A. C. Gunnison, and by letter, or some other way, that he had purchased stock, or was negotiating for the purchase of stock, amongst others, with the following persons or parties, to wit: The Rogers's Locomotive Works, , and I don't remember any others now.

53 ques. Are you at the present time the secretary of the Milwaukee and Minnesota Railroad Company?

Ans. I am not. Dwight W. Keyes is and always has been, I believe, since the organization of the company.

54 ques. Have you in your possession or under your control the books of that company? If nay, state who has the control and possession of said books, and where the same now are.

431 Ans. They are in my control, the same as any other director of the company, its attorney, or secretary. The books have been kept mostly in the office of M. H. Carpenter, the attorney for the corporation, and they are there now.

55 ques. Who has had the possession of the books for the last six months, and who has kept them?

Ans. They have been in the office of said Carpenter, or of the company, which has an office on the same floor of the building in Milwaukee where Carpenter's office is. They have been in the custody of the directors, the secretary of, or the attorney for, the company, accessible by the secretary or anybody else who was interested in them; and the secretary has frequently transferred stock and done various things proper and necessary for the secretary to do with the books.

56 ques. Who are the principal stockholders that have contributed to carry on the litigation for the said railroad company?

(Objected to as last above.)

Ans. Of my own knowledge, excepting myself, I do not know; but I understand and believe that Mr. A. C. Gunnison has contributed money and time, and Mr. A. Flemming some considerable time, Mr.

Moses Kneeland, deceased, contributed some time, and a good many other anxious stockholders at various times, but the names I don't now recollect, have spent a good deal of time in inquiring into and trying to ascertain when the rights of the company would be wrung from a prejudicial court and their stock recognized at its true value.

57 ques. Have you stated truly and according to the best of your present knowledge, recollection, and belief, your answer to the last interrogatory?

(Same objection as last above.)

Ans. I have.

58 ques. How many stockholders of the so-called Milwaukee and Minnesota Railroad Company have contributed any money or time to the litigation of said company, to your knowledge? and state their names.

(Same objection as last above.)

Ans. Excepting myself, and what I have personally observed of the labors of A. Flemming, I do not know personally.

59 ques. What amount of money has been paid out for the company by you during this litigation?

432 (Same objection as last above.)

Ans. Somewhere in the neighborhood of $8,000 or $10,000. I withdraw this answer, having misunderstood the question. I cannot state definitely. I should think twelve or fifteen hundred dollars.

60 ques. Where and to whom has that been paid?

(Same objection as last above.)

Ans. I have paid some clerk's fees, some printing bills, a variety of things, I can't now enumerate farther.

61 ques. Who has been employed as the solicitor for the company?

Ans. Mr. Carpenter and Mr. Hubbell have acted in the capacity of solicitors or counsel.

62 ques. What agreement was made between said company and said Carpenter as to the compensation to be paid said Carpenter, and how, and when, and in what manner to be paid?

Ans. I don't know anything about it. I did not become interested in the litigation until long after it commenced, and long after any arrangement was made, if any was made.

63 ques. Have you paid any, and what amount, and when, towards the purchase of stock spoken of in your examination, and to whom?

(Same objection as last above.)

Ans. Aside from the stock I have already stated I purchased in this city, I have contributed an amount of seven or eight thousand dollars, I cannot tell just how much, at various times during the last three years, the first amount contributed being contributed about the 1st July, 1862, and since then at various times. It is impossible for me to tell the times. These payments for stock have been made to A. C. Gunnison, who was then a resident of New York, and doing business as broker.

64 ques. Has any of the stock so paid for by you been placed in your possession and under your absolute control?

(Same objection as last above.)

Ans. Different amounts at different times have been. I will state as far as I can recollect. One certificate of two hundred shares I held for one or two years, and I have not held any other stock to my recollection, but have owned various amounts at different times, it being in the hands of A. C. Gunnison, New York. This is in addition to that purchased by me in different amounts at different times as I have stated.

65 ques. State what your object and purpose was, after you had full knowledge that the Milwaukee and Minnesota Railroad Company was engaged in extensive litigations in this State, in then, for the first time, joining the litigant parties, and giving, as you say you have given, so much of your time and your money to carry on the litigation. State fully.

433

(Objected to as last above.)

Ans. My object was to make an investment which would compensate me, feeling as I did as a business man that the position of the case warranted such investment, and would pay.

66 ques. How long have you lived in the State of Wisconsin?

Ans. Since the fall of 1855, I think.

67 ques. Were you, at the time you made your purchase and contributed your money, acquainted at all with the history of the La Crosse and Milwaukee Railroad Company?

(Objected as above.)

Ans. To a limited extent, and in a general way—at the commencement, that is.

68 ques. Had you, prior to this time, known of the execution of the so-called third mortgage to Barnes?

(Objected as above.)

Ans. I knew of it in a general way only, as a resident here of the city, and not as particularly interested in anything pertaining to it.

69 ques. At the time or times you advanced your money, as you have stated, was it not the current report and common rumor throughout the city of Milwaukee that there had been great frauds perpetrated by the officers or directors, or parties interested, in the La Crosse and Milwaukee Railroad Company?

(Objected as above.)

Ans. There had been previous to that time a good deal said with reference to the La Crosse railroad matters in connexion with obtaining the land grant for that road through the legislature of Wisconsin; and it had become a matter of record, I believe, at that time, that there had been extraordinary means used to get such grant from the legislature. So much I recollect distinctly of hearing at that time, but anything more, or any other specific charges, I don't now recollect of hearing of, having no other interest than as a citizen in the road.

70 ques. Was it not a matter of common notoriety in the city of Milwaukee, and did you not know at this time, that the La Crosse and Milwaukee Railroad Company was utterly insolvent and unable to pay its debts?

434

(Same objection as last above.)

Ans. At that time I believe the La Croose and Milwaukee Railroad Company must have been in straitened circumstances, from the fact that the road and its property of all kinds was in the hands of the receiver appointed by the district court of the United States for the district of Wisconsin. The time I refer was the fall of 1861, when I advanced my money.

Cross-examination by M. H. Carpenter for the Milwaukee and Minnesota Railroad Company:

1 cross-ques. Did you ever, previous to the foreclosure of the Barnes mortgage, own, or were you previous to that time interested in, any of the bonds secured by that mortgage?

Ans. No.

2 cross-ques. Were you at all concerned in, or did you in any way counsel or advise about, the foreclosure of that mortgage, or the organization of the Milwaukee and Minnesota Railroad Company?

Ans. No.

3 cross-ques. Was Alexander Flemming, to your knowledge, previous to the organization of that company, interested in any of the stock of said company or the bonds secured by the Barnes mortgage beyond the twenty thousand dollars for which Russell Sage acted as attorney for him in the organization of the company?

(Objected to as not proper cross-examination and not responsive to anything called out by the plaintiff, and because it assumes a fact not proved or established, and it is irrelevant and incompetent.)

Ans. No, not to my knowledge.

4 cross-ques. Was there any understanding between yourself and any other person or persons that you would purchase up, so as to control, a majority of the stock of that company, prior to the organization of that company?

Ans. No. At that time I was an entire stranger to both Flemming and A. C. Gunnison. I had never seen either of them.

435 5 cross-ques. You have answered to Mr. Finch hereinbefore that you have attended the sessions of the legislature of 1863 and 1864 to look after the interests of that company. State here now whether you found any, and what person or persons, attending the legislature at those sessions, or either of them, endeavoring to procure the passage of laws injurious to that company?

Ans. Asahel Finch, N. J. Emmons, Hans Crocker; that is all I now recollect.

6 cross-ques. Have you a copy of the bills printed by the legislature, which they were endeavoring to have passed, or any of them? If so, will you present the same to the examiner to be attached as exhibits to your testimony?

(Objected to as irrelevant, incompetent, calling for new matter, not responsive to any fact drawn out by the complainants.)

Ans. I have two, which I produce here before the examiner to be marked by him exhibits "A and B," and annexed to my deposition in this case.

7 cross-ques. Was there also a hearing before the railroad committee of the house, at which counsel for the different interests were heard?

(Objected to as before.)

Ans. There was one, and one before a committee of the senate.

8 cross-ques. Do you know how much stock was owned by A. C. Gunnison at the time of the organizatian of the Milwaukee and Minnesota Railroad Company? If so, state.

Ans. No.

9 cross-ques. Did you, at the time you first became interested in the stock of that cumpany, know, or do you now know, that the Barnes mortgage was issued fraudulently or illegally by the La Crosse company, or that any of the bonds secured by that mortgage were issued fraudulently or illegally by that company?

Ans. No.

10 cross-ques. State as near as you can the time at which it was first determined by A. Flemming, A. C. Gunnison, yourself, or others, to buy up and control a majority of the stock of the Milwaukee and Minnesota Railroad Company; and if you cannot state by date, state at what stage of the legal proceedings this was determined upon.

Ans. I think it was in the month of October or November,
436 1861. It was after Flemming filed his petition for leave to defend.

11 cross-ques. Was Russel Sage at that time president of the Milwaukee and Minnesota Railroad Company?

(Objected to by complainant's counsel as irrelevant and immaterial.)

Ans. He was.

12 cross-ques. Was it not at that time believed by you, Gunnison, and Flemming that the said Sage and other officers of said company were endeavoring to injure said company and destroy it?

(Objected to by complainant as irrelevant, immaterial, and not proper cross-examination.)

Ans. We believed said Sage and enough of the other officers of the company to control it were endeavoring to destroy it.

13 cross-ques. Was this the reason why you, A. C. Gunnison, and Flemming determined to buy up and control a majority of the stock of that company?

(Objected to as before.)

Ans. It was the reason in fact.

14 cross-ques. Have you ever had any motive in procuring that stock or in conducting this litigation other than to protect the interests of the company, and make the stock of the company valuable?

(Objected to as before.)

Ans. None whatever.

AUSTIN GUNNISON.

Adjourned to December 22, 1864, 10 o'clock.

DECEMBER 22, 1864—10 a m.

The parties appeared before the examiner, by their respective counsel, as before, pursuant to adjournment.

And the complainants called as a witness in their behalf Josiah A. Noonan, who, being first duly sworn, answers as follows to oral interrogatories put him by Mr. Finch for complain'ts :

My name is Josiah A. Noonan ; am in my fifty-second year. Reside in Milwaukee, Wisconsin ; have resided there for twenty-five years.

437 1 ques. Are you a stockholder in the Milwaukee and Minnesota Railroad Company?

Ans. I do not know that I am.

2 ques. Are you an officer in that company?

Ans. No, sir.

3 ques. Have you ever been?

Ans. Yes.

4 ques. When?

Ans. At the annual election in May last I was elected one of the directors of the company.

5 ques. Were you at that time a stockholder in the company?

Ans. I authorized a gentleman to buy me sufficient stock to make me eligible as a director.

6 ques. Did that gentleman purchase the stock?

Ans. I understood him to say it was all arranged.

7 ques. Was the stock delivered to you?

(Objected to as immaterial.)

Ans. I never had it.

8 ques. Who was the gentleman that was to purchase this stock for you?

(Objected to as above.)

Ans. Mr. Alexander Flemming.

9 ques. At whose solicitation or upon whose request did you consent to allow your name to be used for a director of said company?

(Objected to as before.)

Ans. I don't recollect, but I had conversations on the subject with both Mr. Flemming and Mr. Carpenter, and with others.

10 ques. Had you at this time any interest of any kind in said company, or in the litigation of said company?—I mean, at the time you were thus spoken to?

(Objected to as above.)

Ans. No. No other than any other citizen and property-holder.

11 ques. What was the object or purpose in selecting you at that time for a director of said company? State fully the reasons which were suggested or urged upon you to accept that position in that company at that time.

(Objected to as above.)

Ans. None other that I know of than to make up a board of directors.

438 12 ques. Did you act in your capacity as director for that company any, and what length of time?

(Objected to as above.)

Ans. I attended one meeting of the board at its organization. In June or July I wrote my resignation and thought I had sent it in to the secretary of the company. Some time in October last, it may have been as late as November, I found the note in my drawer among my papers, and tore it up and wrote another resignation, and sent it in.

13 ques. Were you elected president of the company?

(Objected to as above.)

Ans. No, sir.

14 ques. Do you know of your own knowledge whether there ever was transferred to you, or for your benefit, any share or shares of the stock of said company? and if so, what number of shares, and to what amount?

(Objected to as above.)

Ans. I do not.

15 ques. Have you ever paid or advanced any money or other valuable thing for any share or shares of said stock? and if so, to whom and when?

(Objected to as above.)

Ans. I have not.

16 ques. Have you ever paid or advanced any money or other valuable thing towards the carrying on of the litigation of the said company? If yea, when, where, and to whom, and to what amount?

Ans. I have not.

17 ques. Was your resignation as director of said company accepted, and have you, since the date of said resignation, ceased to act in any official capacity with or for said company?

(Objected to as before.)

Ans. I presume it was. I have had nothing to do with the company since.

18 ques. For what reason did you resign as director of said company?

(Objected to as before.)

Ans. Because I had private business of my own to attend to, and did not want to be bothered with it.

439 19 ques. Did you resign at the request or suggestion of any party or person?

(Objected to as before.)

Ans. No.

J. A. NOONAN.

Taken down in writing, and when completed, read over to the witness and signed by him this 22d December, 1864, in the presence of such of the parties or their counsel as were in attendance before me.

FRANCIS BLOODGOOD,
Examiner, &c.

441 In circuit court of the United States of America for the district of Wisconsin, in equity.

FREDERIC P. JAMES, ABRAM M. BREWER, E. Bradford Greenleaf, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, and J. Howard Mitchell
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company, the La Crosse and Milwaukee Railroad Company, and Selah Chamberlain.

Depositions of witnesses produced, sworn, and examined in the above-entitled cause, on the part of the defendant, the Milwaukee and Minnesota Railroad Company, before Francis Bloodgood, one of the examiners of said court, at his office in the city of Milwaukee, pursuant to rule 67 in equity, and the rules and practice of said court.

NOVEMBER 30, 1864—10 a. m.

Pursuant to notice and order the complainants appeared before the said examiner, by H. M. Finch, esq., their counsel, and the def'ts, the Milwaukee and Minnesota Railroad Company, by M. H. Carpenter, esq., its counsel.

442 *Deposition of A. Mitchell.*

Alexander Mitchell, who being by the examiner first duly sworn, did depose and say, (on oral questions put to him, viz:)

1 ques. What is your name, age, business, and residence?

Ans. Alexander Mitchell; aged 47 years; banker, and residence Milwaukee.

2 ques. Were you holder of or interested in any, and how many, of the bonds secured by the Barnes mortgage on the La Crosse and Milwaukee railroad, prior to the foreclosure of said Barnes mortgage?

(Objected to as irrelevant, incompetent, and immaterial.)

Ans. I was holder of six thousand dollars par value. Strachan & Scott were in fact the real owners, but I held the bonds with authority to do as I pleased. These bonds were obtained upon the surrender of other bonds of the La Crosse company of the same amount.

3 ques. Do you remember the fact and the circumstances attending the foreclosure of the Barnes mortgage so called? If so, at what time did the foreclosure take place?

Ans. I recollect there was a foreclosure, but do not recollect the time. It was in 1859, according to my recollection.

4 ques. Was William Barnes, the trustee named in the mortgage, here in Milwaukee about that time, in regard to foreclosing that mortgage?

Ans. He was here at or about that time. He was here at the time of the sale.

5 ques. What lawyer was employed as counsel in the matter of that foreclosure?

(Objected to as irrelevant and immaterial.)

Ans. Mr. E. G. Ryan was the attorney for the foreclosure.

6 ques. Did you at that time know Russell Sage?

(Same objection.)

Ans. I did.

7 ques. Was he also at that time interested in the bonds secured by that mortgage?

(Same objection.)

Ans. I have no personal knowledge as to the state of his interest, but he was promoting the foreclosure.

8 ques. Did you, Mr. Sage, Mr. Barnes, and Mr. Ryan (spoken of above) consult together from time to time previous to that foreclosure, in relation to said foreclosure?

(Same objection.)

Ans. The parties named came to me frequently in regard to the matter, but as to the substance of the consultation I have now no recollection, but they related to the subject-matter of that foreclosure.

9 ques. Who of the bondholders, or those professing to be such, took the most active part in advising with Mr. Barnes and Mr. Ryan in promoting that foreclosure, so far as you know?

(Same objection.)

Ans. Mr. Russell Sage was the principal party acting in the matter so far as I know, whether for himself personally, or whether representing others, I can't say.

10 ques. Who of the bondholders took the most active part
443 in the organization of the Milwaukee and Minnesota Railroad Company upon that foreclosure, so far as you know?

(Same objection.)

Ans. I should say that Mr. Sage took the most active part according to my recollection.

11 ques. What at that time was the character of Russell Sage as a business man?

(Same objection.)

Ans. His character as a busines man was good.

12 ques. So far as you know the motives and purposes of those engaged in promoting that foreclosure, was it believed by them that the said foreclosure would be and was for the best interest of the public and those concerned in the securities and property? or was it believed that such foreclosure would be detrimental to the public and the persons interested in the securities and property of the La Crosse and Milwaukee Railroad Company?

(Objected to as irrelevant, immaterial, and incompetent.)

Ans. So far as I know it was the opinion of those promoting the foreclosure that it would be for the interest of the public and the parties interested in the securities of the La Crosse road that the foreclosure should take place.

13 ques. So far as you know the motives of those engaged in promoting the foreclosure, was it their design or intention to defraud any

person interested in the subject-matter, or any other person, by that foreclosure.

(Same objection as before.)

Ans. I never heard of and do not believe that they had any such object.

14 ques. So far as you know the circumstances attending that foreclosure, was anything, and what, done for the purpose of defrauding any person in the circumstances, manner, and fact of that foreclosure?

(Same objection as before.)

Ans. I am not aware of anything being done for such purpose.

444 *Deposition of E. G. Ryan.*

NOVEMBER 30, 1864—10 a. m.

Edward G. Ryan, being called as a witness on behalf of the last said defendant, and being first duly sworn, did depose as follows:

I am a lawyer by license, and reside in Milwaukee, Wisconsin.

Ques. Were you retained by or for Wm. Barnes, as counsel, or otherwise, in the foreclosure of the mortgage and supplemental mortgage given by the La Crosse and Milwaukee Railroad Company to him, as trustee, sometimes known and called as the "third or Barnes mortgage?" If so, state when, where, and by whom retained, whether you acted, and state what was done in the foreclosure of that mortgage.

Ans. In the early part of 1859—as well as I recollect in the very beginning of the year—I was retained by Mr. Barnes in person to advise and aid him in and about the foreclosure of the mortgage commonly called the third mortgage. This was in the city of Milwaukee. I advised with him as counsel, and acted for him in that capacity till the sale of the road under his mortgage, and the organization under that sale of the Milwaukee and Minnesota Railroad Company. The road was advertised by Mr. Barnes to be sold under the power of sale in the mortgage, and a suit was commenced in the circuit court of Dodge county, I think, by Edwin Townsend, or, as I understand the fact, more properly speaking by Selah Chamberlain, in the name of Edwin Townsend, impeaching the mortgage and the bonds issued under it, praying amongst other things for an injunction against the sale by Mr. Barnes, under the mortgage. An injunction did issue ex parte, and the sale was in consequence necessarily postponed. A motion on the one side to continue the injunction, or, on the other, to disolve it, I don't remember which, was argued before Judge Sloan at West Bend, by myself for Mr. Barnes, by Mr. Lynde and Mr. Downer, and I don't know but by still somebody else, for Townsend. On that motion the whole merits of that suit were very thoroughly entered into and argued on both sides, and, as I recollect the fact, a great mass of testimony by affidavit was used on both sides. Judge Sloan decided against the injunction and in favor of the validity of the mortgage, and in favor of the sale. Judge Sloan was the judge of the circuit court of Dodge county, where the suit was pending, and of Washington county, where it was heard. He was judge of the 3d circuit of the State. So far as I now recollect, the dissolution or refusal of the injunction on that motion was the end of that suit. No move was ever made in

it afterwards. There was an agreement made to dismiss this suit, as well as I recollect. I never looked to see whether it was done or not.

445 Before the day named for the adjourned sale, two other suits of the same general character were commenced, one by Newcomb Cleveland, claiming as a stockholder of the La Crosse and Milwaukee Railroad Company, I think; the other by a Mr. Litchfield, whose first name I don't recollect, as a jndgment creditor of the La Crosse and Milwaukee Railroad Company. I made two motions in the Cleveland suit: the first to set aside the injunction for irregularity, which was overruled by Judge Orton, the judge of the circuit court of Columbia county, where the suit was commenced. I then moved to dissolve the injunction, and made that motion upon an immense body of documentary evidence, affidavits and exhibits, giving a full history of the mortgage and supplement, and of the issue of bonds under them; and on the day for which the motion was noticed, went to court to make the motion before Judge Orton. Mr. Carpenter and Mr. Lynde, who represented Mr. Cleveland in that suit, appeared for him in the motion, and stated in substance to the court that it would be useless to waste time in the argument of the motion; that my evidence on which I made the motion had completely overpowered their case, (was the substance of what they said;) and the injunction was dissolved without argument of the motion, by Judge Orton. I had served copies of all my papers on the opposite side before the time of hearing.

I do not remember with any certainty whether I made any motion in the Litchfield suit or not. I think I did. That was in the circuit court of Milwaukee co. This suit was commenced by Butler, Buttrick & Cottrill, as attorneys; but before the second adjourned day of sale, (the sale was adjourned the second time on the service of the two last mentioned injunctions,) the injunction in that case was dissolved by consent. When the day of sale came, there was no undissolved injunction against the sale, and the sale took place.

That was on some day in May, 1859. The property was purchased by Mr. Barnes in trust for the bondholders. I drew a report of sale, which Mr. Barnes executed, which was accompanied by vouchers of all the facts relating to the sale, and filed them in the office of the secretary of state.

I also drew a deed of organization upon the sale and purchase, organizing the Milwaukee and Minnesota Railroad Company, in duplicate, which was executed in duplicate, and one of them recorded in the office of the secretary of the State of Wisconsin.

The deed of organization was executed by Mr. Barnes, and contained a conveyance of the property purchased at the sale to the Milwaukee and Minnesota Railroad Company, and was also executed by a number of persons as bondholders. The great number of bondholders in amount executing it were represented by Mr. Russell Sage their attorney.

Mr. Sage had thoughout acted on behalf of a large amount of the bonds, and, under the direction of Mr. Barnes, I had consulted very largely with Mr. Sage and with Mr. Alexander Mitchell throughout my entire retainer. If I recollect correctly, some subsequent steps

were taken in the Cleveland suit, but ineffectual as long as I had any connexion with it, but, virtually, upon the report of sale and the deed of organization by Mr. Barnes, my retainer for Barnes ended, I suppose.

(Mr. Finch objects to the whole of the above answer as irrel-
446 evant and incompetent, hearsay in its character, and gives the contents of writings and records, and the writings and record are the best evidence.)

Ques. Do you know any fact or circumstance tending to show that those foreclosure proceedings were not had and conducted in good faith? and if so, state the same fully.

(Objected to by Mr. Finch as irrelevant and incompetent.)

Ans. I am here as a witness of facts and not a judge of their validity. There are many facts with regard to the foreclosure within my knowledge in professional confidence which I should not be at liberty to disclose if I were questioned about them; but so far as I understand all the facts, however known to me, I know of nothing tending to show that the foreclosure proceeding was not conducted throughout for the sole purpose of realizing the security of the road for the bondholders, and so far as I understood the action and motives of Mr. Barnes, he acted throughout in perfect good faith to that end.

Ques. Did you act as counsel or adviser in and about the organization of the Milwaukee and Minnesota Railroad Company, by election of officers, &c., after the deed of organization?

Ans. The first directors of the corporation were appointed by the deed of organization. I attended a number of their first meetings, at some of which they elected president, secretary, treasurer, and perhaps other officers. I have forgotten. I was myself appointed attorney of the corporation, and remained so for some months, when I resigned. I advised the corporation and its officers until I became satisfied that the board of directors were acting under other advice, hostile to the interests of the stockholders, and tending to betray their trust; then I ceased to act for them.

(Mr. Finch objects to this testimony as irrelevant and improper.)

The witness adds it is proper to state in this connexion that another occasion of my resigning the attorneyship, and ceasing to advise them, was the refusal of the corporation to pay me for my services in the foreclosure, out of a fund raised by them for that amongst other purposes.

Ques. What persons were most active and influential in that board of directors while you remained attorney for the corporation?

(Mr. Finch objects to this question as irrelevant, improper, and immaterial.)

Ans. Mr. Russell Sage was elected president of the company. He had been very active throughout the foreclosure, and, together with Mr. Alexander Mitchell, had dictated the first board of directors, and seemed to me to be the most active member of the board. Mr. Norman J. Emmons and Mr. Hans Crocker were also active members of the board. Mr. William E. Smith was, more or less. I don't recollect anything particularly said or done by any other director except those I have mentioned.

Cross-examination:

I have neither read or heard read the bill or answer in the cause. I got a printed copy of the bill from Mr. Lynde, intending to read it, but I have never read it. The answer I have never seen. I am not a counsel in this case for the defendants, or I would not be a witness for them.

447 Ques. Have you agreed with the defendants, or with Alexander Fleming, agent of the defendant, or with any other party interested with the defendant, to write out, prepare, or submit a brief or argument in this cause, upon so much and such parts of the issue as is involved the question of the validity of the foreclosure proceedings under the so-called Barnes mortgage?

Ans. I have not. Mr. Carpenter, as counsel for the Milwaukee and Minnesota Company, applied to me to make an argument, not meaning this or any other cause, on the validity of my own work in the foreclosure, for a fee to be paid to me by Mr. Fleming. I declined to do so, but I promised Mr. Carpenter that I would prepare and hand to him a statement of the views on which I had conducted the foreclosure, for no fee or reward, but as a matter of justice to the clients for whom I had acted, and to myself; and I of purpose mentioned the fact to Mr. Pratt, of Cary & Pratt, the attorneys of the Milwaukee and St. Paul Railway Company, whom I understood to be the litigants of the validity of the organization.

I choose to say also in that connexion, that I years ago sold my stock and bonds under the 3d mortgage, and for years past I have had no personal or professional interest in the company. I was regularly subpœnaed and paid my fees for attending as a witness here, without any previous knowledge that I was to be a witness, and without any knowledge as to what I was to be examined about, until I was examined.

E. G. RYAN.

Taken down in writing, and when completed, read over to the witness, and signed by him this 30th November, 1864, in the presence of such of the parties or their counsel as were in attendance by and before me.

FRANCIS BLOODGOOD, *Ex., &c.*

Deposition of Wm. P. Lynde.

448 William Pitt Lynde called by the defendant, the Milwaukee and Minnesota Railroad Company, being first duly sworn by the examiner, did answer and depose as follows, to oral interrogatories put him by Mr. Carpenter.

Ques. Are you one of the complainants' solicitors in this cause?

Ans. I am.

Ques. Have you read the foregoing deposition of E. G. Ryan?

Ans. The greater part of it.

Ques. In the suit mentioned in that deposition in favor of Edwin Townsend, were you engaged for him, and did you participate on his behalf in the argument as to the injunction?

(Objected to, because, first, it is incompetent, irrelevant, and immaterial; second, that Edwin Townsend is no party to this suit; third, that what took place or what was done by any party employed by Edwin Townsend cannot, in any way or manner, affect any right or settle any question involved in this issue in this cause between the parties to this cause.)

Ans. I was employed by Mr. Townsend in a suit that was brought before Judge Sloan, in Dodge county, to enjoin that sale, (whether it was brought in his name or that of some other party, I will not now be positive,) and went to Juneau, in Dodge county, and was present at the argument. (I am mistaken as to the place, the argument was at West Bend, in Washington county.) The argument was on an order to show cause why an injunction should not issue to restrain that sale, if I recollect aright, the order being also a temporary injunction till the hearing was had; my recollection, is that the hearing was had upon the complaint, and upon affidavits produced at the hearing on the part of the defendants, by Mr. Ryan, and which I had not seen till they were produced there by Mr. Ryan; my impression is we tried to get a postponement of the hearing, to afford an opportunity to get counter affidavits, which motion was denied; we attempted to exclude the affidavits, but did not succeed; the affidavits were received, and after the argument of the cause the court retained the papers for a day or two, then discharged the rule; the principal argument for the complainants on that hearing was made by Mr. Downer; whether anybody else made a speech I can't recollect.

Ques. Were the proceedings in that cause conducted by yourself and associates for the plaintiff therein earnestly and in good faith to obtain the injunction to prevent the sale?

(Objected to, because, first, the question calls for testimony that is irrelevant, incompetent, and immaterial to the issue in this cause; second, Edwin Townsend is no party to the proceedings in
449 this cause; third, the complainants in this cause were no parties to that suit, and had no opportunity to be heard in that suit, and were not heard in that suit; fourth, that what was said and done by the counsel of Edwin Townsend in that suit cannot bind the complainants in this suit; lastly, that no rights of the complainants in this suit can in any way be impaired or affected by the proceedings in that suit.)

Ans. They were.

Ques. Do you remember the suit of Newcomb Cleveland against Barnes and others, mentioned in Mr. Ryan's deposition above, and were you retained, and did you act therein for the plaintiff, Cleveland?

(Objected to as immaterial and irrelevant.)

Ans. I don't recollect this suit; I can't now bring to my mind any fact in regard to this case; if you have any fact or thing by which I can refresh my recollection, I will wait.

Ques. Do you not recollect that Cleveland brought a suit, as a stockholder of La Crosse and Milwaukee Railroad Company, to enjoin that sale in the circuit court for Columbia county? that an in-

junction was obtained on behalf of the plaintiff? that Mr. Ryan moved to vacate it for irregularity? that you resisted the motion, and the judge overruled it? that Mr. Ryan then made a motion to dissolve the injunction, based upon a great number of affidavits contradicting the statements of the complaint? that you examined the copies of the affidavits served, and expressed your opinion that it was useless and hopeless to attempt to sustain the injunction against those affidavits, and that you so stated to Judge Orton, at the time fixed for hearing the motion to dissolve the injunction?

(Objected to as irrelevant and immaterial.)

Ans. I have no recollection, or rather my recollection is so entirely indistinct in regard to it, that I can't testify to any such suit. I was acting as counsel for Mr. Cleveland with regard to a great many suits that he had brought, or contemplated bringing, at that time in regard to the La Crosse and Milwaukee Railroad Company, he attempting to keep up the organization of that company; and I recollect one suit that was pending here, in which Mr. Ryan was on the other side; Mr. Ryan produced in court a large number of affidavits, and they were very lengthy; and that Mr. Cleveland was absent in the city of New York, and owing to his absence we had no facility for producing counter affidavits; but as I have had no occasion to recur to that suit since the time when it was pending, or to refresh my recollection with regard to it, I cannot tell now what the purpose or object of the suit was; the hearing at which these affidavits were produced was in Milwaukee.

Cross-examination by Mr. Finch:

450 Ques. When was you first spoken to by Mr. Carpenter about being a witness in this suit?

Ans. Mr. Carpenter sent his clerk into my office this afternoon, after dinner, to know whether I would come down before the examiner to be examined as a witness in the cause; I asked when they wanted to examine me; he said they could do it right off, and I came right along.

Ques. Had you, prior to coming into the room and before the examiner, had your attention called by Mr. Carpenter to the particular points of testimony in this case? or had Mr. Carpenter ever at any time, prior to coming into the examiner's room this afternoon, spoken to you upon the subject of your testimony in this cause?

Ans. No, I had no intention or supposition that I was to be called as a witness at all.

Redirect by Mr. Carpenter:

Ques. Can you, if the taking of your testimony be adjourned, refresh your recollection as to this matter? Or do you desire such adjournment for that purpose? If so, I consent to such adjournment for any reasonable time you may desire.

Ans. If an adjournment was had I could undoubtedly, from the records of the case, ascertain if any such suit was brought; the purpose and object of bringing it, and whether I acted as counsel; but I don't think I have any papers in my office in such case; I don't think

I could refresh my recollection as to expressions made seven years ago, even after an adjournment; I have no desire as to an adjournment, either one way or the other.

WM. P. LYNDE.

Taken down in writing, and when completed, read over to the witness, and on this 30th day of November, 1864, signed by him in the presence of such of the parties or their counsel or were in attendance before me.

FRANCIS BLOODGOOD, *Examiner, &c.*

451 *Deposition of S. Chamberlain.*

DECEMBER 19, 1864.

The parties appeared as aforesaid, and the defendants, the Milwaukee and Minnesota Railroad Company, called Selah Chamberlain, who, being by the examiner first duly sworn, did depose and testify as follows, to wit:

Ques. What is your name, age, and residence?

Ans. Selah Chamberlain; forty-eight years; residence, Cleveland, Ohio.

Ques. Are you the Selah Chamberlain who constructed a portion of the La Crosse and Milwaukee railroad, mentioned in the bill of the complaint in this cause?

Ans. I constructed the La Crosse and Milwaukee railroad from Beaver Dam to La Crosse, in company with others.

Ques. Did the La Crosse and Milwaukee Railroad Company and yourself, some time in the summer or fall of 1858, have a reckoning and settlement of certain claim or claims, which resulted in the company giving you its note for $20,000?

Ans. We had, and the company gave me such note.

Ques. What was the claim thus settled?

Ans. It was the balance due on the contract for completing the road from Tomah to La Crosse.

Ques. Was that claim an honest and bona fide claim on your behalf against said company, to the amount for which said note was given?

Ans. It was.

Ques. Were any, and what, collateral securities delivered you by said company?

Ans. Four hundred thousand dollars in bonds, of what is commonly called the third mortgage bonds on the La Crosse and Milwaukee railroad.

Ques. Was the note paid by said company at its maturity, or at any and what other time?

Ans. It was not paid at its maturity: it was renewed; (the time was extended at the request of the company for thirty days, no new note being given; I held the old note;) a little after the expiration of the extended time I met the directors of the company in New York city, and was informed by them that they had not the money to pay the note, and that they had no prospects of having any; and that I

must raise my money from the collaterals that I held against the company. I then employed my brokers, the firm of Meigs & Greenleaf, to sell the bonds and pay the note on the best terms they could; they did sell the bonds and I received my money.

Ques. Did you ever give Meigs & Greenleaf any other directions about the disposition of said bonds, than to dispose of them in due course of business and to the best advantage? and if so, what other did you give?

452 (Objected to as immaterial and incompetent.)

Ans. I never gave them any other instructions.

Ques. Was there any agreement between you and the company, at or before the time these bonds were delivered to you as collateral, that the note should not be paid at its maturity, and that the bonds should be sacrificed by you, or divided up among the officers of the company or any other person or persons at nominal rates? or was there any other arrangement or understanding in substance like that, or in substance like any part of that? If yea, state the same fully as it was made or existed, and state when, where, by and between whom, was it made or existed.

Ans. There was no such arrangement made.

Ques. What became of the twenty thousand dollar note after the sale of said bonds?

Ans. It was given up to the La Crosse and Milwaukee Railroad Company; given to Mr. Stanton, I believe, who was the president of the company.

Ques. Did you receive from the sale of said bonds the amount of said note in cash?

Ans. I did; I received the twenty thousand dollars in cash from Mr. Meigs, of the firm of Meigs & Greenleaf.

Ques. Has the La Crosse and Milwaukee Railroad Company ever offered to pay, or tendered to you, the said twenty thousand dollars specified in said note, or demanded of you said bonds so held as collateral? Or has said company ever given you any, and what, notice or intimation that it objected to, disavowed, or complained of the disposition of said bonds by you to pay said note?

Ans. The said company never has offered to pay or tendered the amount of said note, nor have they demanded of me the said bonds so held as collateral, nor found any fault with the disposition of the same.

Ques. Who of the directors did you see in New York city, as you have spoken in your former answer?

Ans. I saw Mr. Stanton, (the president,) Mr. Guest, Mr. Gunnison, Mr. Nixon, Mr. McGregor, and I believe Mr. Radcliffe and Mr. Platt; might have seen more, but don't recollect now; my impression is that Mr. Wm. E. Smith was there, and I think Mr. Luther, but I can't swear to it.

Ques. Did you learn from the directors at that time that the company was unable to pay the note, and had no hopes of being able to pay it?

Ans. I did.

Ques. Do you know whether or not there was a meeting of these directors, as a board of directors, at the St. Nicholas Hotel, New York city, at about this time?

Ans. There was a meeting of the said board at the St. Nicholas at about that time.

453 Ques. Do you know whether or not the said board received or had before them at that time a written notice from Meigs & Greenleaf that said bonds so held as collateral would be sold to pay said note on a certain day mentioned in said notice, unless said note was paid before or by that time?

Ans. I don't know that the said notice was before the board at that meeting; I know it was served upon the company at about that time; it was served upon the president, Mr. Stanton, in the office of the company in my presence.

Ques. At the time these bonds were delivered to you as collateral, was it the agreement that in case said note was not paid said bonds might be sold at public or private sale? Or was it the agreement that said bonds should be sold only at public sale.

Ans. It was a stock note authorizing the bonds to be sold either at public or private sale, in case of non-payment of the note.

Cross-examined:

Ques. Were you present at the time the bonds were sold by your brokers, Meigs & Greenleaf?

Ans. I was not.

Ques. Do you know of your own personal knowledge how or in what manner these bonds were sold? To what person or parties?

Ans. No, I do not, from my own personal knowledge.

S. CHAMBERLAIN.

Taken down in writing, and when completed read over to the witness, and on this 19th December, 1864, signed by him in the presence of such parties and counsel as were in attendance before me.

FRANCIS BLOODGOOD, *Examiner, &c.*

454 UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, Francis Bloodgood, an examiner in chancery of the circuit court of the United States of America for the district of Wisconsin, do hereby certify that the foregoing depositions of Edward G. Ryan, Wm. Pitt Lynde, Selah Chamberlain, and Alexander Mitchell were taken before me at my office in the city of Milwaukee, at the time and times in the captions and orders thereof stated, in a certain cause pending in said court on the equity side thereof, wherein Frederic P. James, Abram M. Brewer, E. Bradford Greenleaf, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, and J. Howard Mitchell are the complainants, and the Milwaukee and Minnesota Railroad Company and Selah Chamberlain are the def'ts.

That said depositions are part of the testimony on behalf of the def't, the Milwaukee and Minnesota Railroad Company, taken before me as such examiner, pursuant to law and the practice of said court and the 67th rule of said court in equity; that due notice was given

of the time and place of taking said depositions; that said depositions were taken upon oral questions; that the witnesses were respectively first duly sworn by me, and the depositions as given were reduced to writing by me, and after being read over by me to them, were subscribed by said witnesses respectively, in the presence of the said examiner and of such of the counsel and parties as were in attendance.

That the caption and body of said depositions and this certificate show what parties appeared, and how, and all the proceedings before said examiner at the taking of said depositions. And I do further certify that I have retained said depositions in my possession for the purpose of delivering the same with my own hand into the said court for which they were taken.

In testimony whereof, I have hereunto set my hand and seal this day of , A. D. 1865.

455 In circuit court of the U. S. of America for the district of Wisconsin, in equity.

FREDERICK P. JAMES, ABRAM M. BREWER, E. Bradford Greenleaf, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, and J. Howard Mitchell
against
THE MILWAUKEE AND MINNESOTA RAILROAD Company, The La Crosse and Milwaukee Railroad Company, and Selah Chamberlain.

The deposition of Nehemiah P. Stanton, a witness produced, sworn, and examined in the above-entitled cause on the part of the defendant, the Milwaukee and Minnesota Railroad Company, before Francis Bloodgood, one of the examiners of said court, at his office in the city of Milwaukee, pursuant to rule 67 in equity and the rules and practice of said court, on the 17th day of April, A. D. 1865, at 2 p. m. Present, H. M. Finch, esq., of counsel for the complainants, and M. H. Carpenter, esq., and Jas. G. Jenkins, esq., of counsel for defendant, the Milwaukee and Minnesota Railroad Company.

Nehemiah P. Stanton, who being by the examiner first duly sworn, did depose and say, on oral questions put to him, viz:

1 ques. What is your name, age, and occupation?

Ans. Nehemiah P. Stanton; age, forty-two years; residence in New York city. I am running seventeen hundred acres of cotton land in Arkansas at present.

2 ques. Were you ever, and when, and from what time to what time, president of the La Crosse and Milwaukee Railroad Company?

Ans. I was president of such company from the fore part of April, 1858, until the sale under the foreclosure of the third or Barnes mortgage.

3 ques. Were you acquainted with the business affairs and finan-

cial condition of said company during the term you were such president?

Ans. I was.

4 ques. State, in as great detail as you are able, what was the financial condition of said company in April and May, 1858, and what did it continue to be until January, 1859.

Ans. I can't state in detail; I can state the general condition of the company; I will state what I can; the company was in a very embarrassed condition, with hope for life; I can go on and state generally it had not paid the coupons on its farm mortgage bonds for a year; it
456 owed a large floating debt to parties who had furnished the materials for the building and equipping of the road, and I think that the land-grant coupons for February, 1858, had not been paid in February, but we had not the means to pay them in August. All these embarrassments were while the road was unfinished to the Mississippi. I have no means of stating in round numbers the floating debt of the company at that time; I don't know it; it continued in this embarrassed condition till January, although many debts had been paid, and the road has been finished.

5 ques. Were you president of said company at the time of the execution and delivery by said company of the mortgage and supplemental mortgage to Barnes, dated June 21, 1858, and August 11, 1858, respectively, and called the third mortgage?

Ans. I was.

6 ques. State why said mortgages and the bonds thereby secured were issued by said company, whether the same were successively issued or otherwise, and the facts and circumstances in the financial condition of said company, which made the issuance of said mortgage necessary.

The counsel for the complainants here asks the counsel of the Milwaukee and Minnesota Railroad Company whether this deposition is taken by way of the cross-examination of the witness to his deposition taken before Geo. F. Betts, esq., and subscribed by the witness on the 29th August, 1864, in this cause, or whether the same is taken as an original deposition of this witness on behalf of the complainants in this cause, and desires to have this question spread upon the record.

Mr. Finch then objected to question 6th as not proper cross-examination.

Ans. They were issued to raise means to be used for the best interests of the company. They were necessarily issued. The pressing demands against the company, and the unfinished condition of the road, which we wished to finish, rendered their issuance necessary. These pressing demands consisted of unpaid coupons upon our bonds, indebtedness for rolling stock, and materials furnished and labor performed for the company. The mortgage was issued for the express and only purpose, so far as I know or believe, to raise means for paying off such indebtedness and completing the road.

7 ques. Were said mortgages and the bonds thereby secured issued for the purpose of hindering and defrauding the creditors of said

company, or were they issued for the purpose of paying the just debts of said company, or for what other or different purpose, if any, were the same issued?

(Same objection as to last question.)

Ans. They were issued for the purpose of paying the just debts of the company, and for completing the road, and for no other purpose whatever. They were not issued for the purpose of hindering and defrauding the creditors of said company.

8 ques. What amount, if any, of said bonds were disposed of and put in circulation by said company prior to the sale under said mortgage made on the 21st of May, 1859?

(Same exceptions as to last question.)

Ans. Including those bonds that were issued to and held by trustees to be used for certain specified purposes, I think the
457 whole amount, two millions, were out, except that there may have been some remaining in the Milwaukee office, which were left here to pay indebtedness in the State of Wisconsin, and I think they were all paid out. Those bonds issued and held in trust were, as near as I can remember, as follows: Five hundred and fifty thousand dollars in amount were issued to Stoddard Judd for the purpose of settling with the farm mortgagors by taking up our obligations to them to pay interest and to retire the stock they held, at fifty cents on the dollar. Between one and two hundred thousand dollars in amount to Russell Sage, to be used by him in settling a claim, the Mercantile Bank of Hartford, and a claim that Newcomb Cleveland had against the company. I think a settlement of the judgments in favor of Sebra Howard and of E. C. Litchfield against the company were included in the trust to Sage also.

9 ques. State whether or not, in the fall of 1858, Selah Chamberlain held the note of said company for twenty thousand dollars. If yea, state for what said note was given, and if said company delivered to or pledged with said Chamberlain any, and what, security collateral thereto.

(Same objection as to last question.)

Ans. He did hold such note. It was given for an amount due him from the company as contractor in building the road, on his monthly estimate. He held four hundred thousand dollars in amount of the third mortgage bonds as collateral security for the payment of this note.

10 ques. When did said note mature? Was it paid by the company at its maturity? and if not, what then was done? Was the company able to? and did it ever pay, the same? and why was not said note paid? And did said Chamberlain make any, and what disposition of the securities he held as collateral to said note?

(Same objection as to last question.)

Ans. It matured in the early part of December, 1858, and was not paid by the company. The company was not able to pay, and never paid the same. At and after the maturity of the note Mr. Chamberlain extended the time of its payment once or twice. It was not paid because the company had not the funds to pay it. Mr. Cham-

berlain left the collateral with a broker. Meigs or Greenleaf returned me the note cancelled and paid.

11 ques. At what time did the board of directors of said company become aware of the fact that said Meigs & Greenleaf had sold said bonds? and did said company thereafter, and prior to the 21st of May, 1859, and when, take away, and what proceedings, to redeem or reclaim said bonds? and did said company give any, and what, notice to the public and persons dealing in such securities that said sale had been irregular, or in any way improper?

(Same objection as last.)

Ans. I can't state the time, but it was at the first meeting of the board after the sale. I had, previous to the sale, passed over to the funding committee the notice that Meigs & Greenleaf had given me that they would sell the bonds unless the note should be paid by a certain time, with a request that, if possible, it be paid, as I was going to Wisconsin, and they must attend to it. I don't know of any act on the part of the company at any time to recover or redeem the bonds at or after the sale.

458 12 ques. Did the debtor company ever to your knowledge, subsequent to said sale of said bonds, *ever* tender to Chamberlain, or to the purchasers of said bonds, any money, or make any demand for the return of the bonds, or any of them?

(Same objection as to last question.)

Ans. No.

13 ques. Have the bonds secured by the Barnes mortgage been bought and sold and passed from hand to hand like other bonds, in the city of New York and elsewhere?

(Same objection as to last question)

Ans. They have.

14 ques. Was there to your knowledge any understanding whatever between said company, yourself, or any other officer of said company, with said Chamberlain, or with Meigs & Greenleaf, prior to the sale of these bonds, that said bonds should be divided up between any of the officers or agents, directors or managers, of said company, or either of them or their friends? If so, state the same fully.

(Same objection as to last.)

Ans. There was no such understanding to my knowledge.

15 ques. Were you present at a meeting of the board of directors on or about the first day of June, 1858, at which the board authorized an issue of two millions of dollars of bonds?

(Same objection as to last.)

Ans. I was.

16 ques. Were you present at a meeting of the board in Albany, N. Y., on or about June 15, 1858, at which time a resolution was passed directing the bonds to be issued under the Barnes mortgage in such form that interest would become due thereon on the first day of January, 1859, instead of the first day of July, 1859?

(Same objection as to last question.)

Ans. I was not.

17 ques. While you were president of said company, was there a

book of records kept of the proceedings of the board of directors, and did the same, to the best of your knowledge, record correctly the proceedings of said board?

(Same objection.)

Ans. We did keep such a book, and the proceedings were therein correctly recorded. We kept two of such books, one in Albany and one here. The proceedings at Albany were from time to time affirmed by subsequent meetings here.

18 ques. Is the book here now presented to you, and marked with your initials in the margin of page 49, and also marked with the initials of the examiner, F. B., the book of record of the La Crosse and Milwaukee Railroad Company, which was kept at Milwaukee, spoken of by you above?

(Same objection as to last question.)

Ans. It is.

19 ques. Did you as president of the company make a certain contract in writing with Stoddard Judd, under which were delivered to him five hundred and fifty thousand dollars of the bonds secured by the Barnes mortgage?

(Same objection as to last question.)

459 Ans. I did.

20 ques. Were you present at a subsequent meeting of the board at which a resolution was passed directing a new contract to be made with Judd, extending the time for the performance of the trust one year from the time fixed in the original contract?

(Same objection as to last.)

Ans. I can't say that I was present at this meeting of the board, but such a resolution was passed at such meeting, and I made such a contract with Judd in pursuance of it.

21 ques. Is the fact that a particular class of bonds or other securities were never put upon the stock boards in New York regarded by business men as any evidence of the invalidity thereof.

(Same objection as to last question.)

Ans. No.

Adjournment to April 18, 1865, at ten o'clock a. m.

When the witness Stanton appeared.

Previous to adjournment yesterday it was stated by the respective counsels that neither of them would be able to attend in person on the adjourned day, as each had engagements out of the city for that day, and it was thereupon stipulated between them, before the examiner, that the examination of the said witness should be continued by the said examiner the same as if the counsel were each formally present, upon written interrogatories on the part of the defendants, the Milwaukee and Minnesota Railroad Company, and cross-interrogatories on the part of the complainants, left with the said examiner for such purpose. The examination of said witness was thereupon so continued by said examiner, (neither counsel being personally in attendance,) as follows:

22 ques. Did you as president of the said company borrow on its behalf at some time, and what time, certain sums of money of one Wat-

son, one Gould, one Foster, and one Gilbert? If yea, what sums of money were borrowed of each of them respectively? Was any, and what, note or evidence thereof executed to them respectively? Were any, and what amount, and what kind of securities delivered to them as collaterals to said notes? and if yea, were said persons authorized to sell said collaterals in case of non-payment of said notes at maturity, at public or private sale, or at public sale only?

Ans. I did, as such president, borrow of Watson, Gould, and Gilbert, I don't remember as to Foster, certain sums of money. I can't state the amount. The notes of the La Crosse and Milwaukee Railroad Company was given for the same. Third mortgage bonds of the company were put up as collateral security at the rate of five cents on the dollar, I think. Said parties were authorized to sell said collaterals in case of non-payment of said notes at maturity; whether at public or private sale, I don't remember, I can't say.

23 ques. At or before the time said loans were made from said Gould, Watson, Foster, and Gilbert, was there any agreement or understanding between said company, or any of the directors of said company, and the said Gould, Watson, Foster, and Gilbert, or either of them, that the said sums of money borrowed from them, respectively, should not be repaid, so that they, or either of them, should keep, divide, or dispose of the bonds held as collateral to said loan, in any, and what particular way?

460 Ans. I know of no such agreement or understanding as mentioned in the last interrogatory.

24 ques. At the time said sums of money were borrowed from said Watson, Foster, Gilbert, and Gould, or at the time said notes were given to them respectively, or at the time said third mortgage bonds were pledged to them respectively, was there any understanding or agreement between said company, yourself, or any other director of said company, and the said Watson, Gilbert, Gould, and Foster, or either of them, that said notes, or either of them, would not be paid, or that said bonds pledged as collateral thereto would not be redeemed by said company? If so, set forth said understanding or agreement fully and at large, and state by and between what persons, if any, made or existed.

Ans. I know of *of* no such understanding or agreement between said parties or either of them.

25 ques. At the time said sums were borrowed from said Watson, Gould, Gilbert, and Foster, state why and for what purpose said sums were borrowed, and whether or not the same were required for said company.

Ans. The money was borrowed to pay immediate pressing demands against said company, which was actually necessary to pay for the interests of said company.

26 ques. For whose benefit was the money used that was borrowed from said Watson, Foster, Gould, and Gilbert? And state whether any, and what part of it was converted by you to your own use, and whether any, and what part of it was converted to the individual use or manager of said company.

Ans. It was used for the benefit of the company. I don't think one dollar of it was used by myself for salary or otherwise. Different amounts of it were paid to certain other officers and directors for just claims against the company for expenses or otherwise.

27 ques. State whether said company has ever repaid to said Watson, Foster, Gould, and Gilbert any part of the money borrowed from them, respectively, otherwise than by the avails of the said bonds deposited as collateral security for said sums borrowed respectively.

Ans. Said company has never paid any part of said money borrowed.

28 ques. At what time, as near as you can state, did the board of directors of said company learn that said Watson, Gould, Gilbert, and Foster has disposed of the bonds pledged to them, respectively, as collateral security as aforesaid?

Ans. Some of these parties, and I think all, (excepting Foster, about the loan to whom I don't recollect,) served notices on me, officially, that the notes were due, and unless paid they should sell the bonds, which is all I know about it.

29 ques. Did said company ever at any time take any, and what, steps or proceedings, or reclaim said bonds disposed of by said Gilbert, Gould, Foster, and Watson, or either of them? And state whether said company ever published any and what notice to the world, or to persons dealing in said third mortgage bonds, that the said Gould, Watson, Foster, or Gilbert had improperly disposed of the bonds, or any part of them, pledged to said Gilbert, Gould, Watson, and Foster, respectively.

461 Ans. Said company never took any steps to reclaim said bonds, nor did they publish any notice to the world that said Gould, Watson, Foster, and Gilbert had improperly disposed of the bonds, or any part of them.

30 ques. Did said company ever offer or tender to any of the persons who purchased any of said bonds from said Gould, Watson, Foster, and Gilbert, or either of them, the amounts respectively which they had paid for said bonds?

Ans. Said company never tendered to said persons who purchased said bonds the amounts which they had paid for said bonds.

31 ques. At the time the said notes to said Gould, Watson, Foster, and Gilbert matured, had the said company any means, or had its officers in their possession any means belonging to said company, with which to pay said notes or either or any of them? If yea, state whether said company paid any of said notes, and which, and how many of said notes said company did pay, and if it did not pay all, why did it not?

Ans. The company had no money to pay said notes; its officers had no means belonging to said company to pay said notes at the time of their maturity. The notes were not paid.

32 ques. Were you in Milwaukee at the time of the sale made by Barnes before mentioned on the 21st May, 1859? If yea, did you see the said Barnes at Milwaukee at the time? If yea, did you know

anything of the circumstances of said Barnes leaving Milwaukee? If yea, state whether he, said Barnes, left Milwaukee secretly or hurriedly, or how otherwise.

Ans. I was not in Milwaukee at the time of the sale made by Barnes, and know nothing of the circumstances attending the sale.

33 ques. Did the said La Crosse and Milwaukee Railroad Company ever redeem the premises sold by said Barnes under said mortgage? If yea, state when, where, and the circumstances.

Ans. The said La Crosse and Milwaukee Railroad Company never did redeem the premises sold by said Barnes under said mortgage.

34 ques. Had you when you were in Milwaukee in December, 1858, any, and what, sum of money in your possession or under your control, and belonging to the La Crosse and Milwaukee Railroad Company, in addition to the amounts borrowed by you from said Gould, Watson, Foster, and Gilbert?

Ans. I had none.

35 ques. Were you present at a meeting of the board of directors of said company at Albany, N. Y., on or about the 13th December, 1858? If yea, did said board of directors at that time pass a preamble and resolution, as follows, viz:

Whereas this board has received information from Milwaukee that a very large amount of its most valuable property in the city of Milwaukee, including its machine shops, engine-houses, repair shops, the cost of which to this date, including the improvements thereon, more than one hundred and fifty thousand dollars, are in imminent peril of being lost to this company in consequence of the non-payment of the sum of ten thousand dollars and interest, being balance due on contract for the purchase-money of said premises, and proceedings having already been commenced for the purpose of ejecting the company from the possession of said premises; and whereas the company are
462 entirely destitute of means whereby to save from a total loss said machine shops, roundhouses, and premises, if proceedings already commenced shall not be discontinued by the payment of said sum; and believing that any means within our power to protect and preserve the said property to the company is the duty of the board to resort to and adopt, inasmuch as the said premises are vital and indispensable to the working of said road; and whereas there have already been sales during the present month of some of the real estate belonging to the company in the city of Milwaukee indispensable to the working of the road, which may yet be redeemed and saved for the company; and whereas this board have not until recent date been aware that the property of the company was in the peril we now find it, having relied upon the statements and information obtained from the former officers of the company, and no record on the books of the company having exhibited the present condition of affairs; and whereas the arrangements contemplated with Selah Chamberlain, by which he was to furnish such sums of money as may be necessary to protect the property of the company from sale or otherwise for defraying the necessary expenses and salaries incident to our organization, &c., &c.,

has failed on account of Mr. Chamberlain declining to carry out such plan: Therefore—

Resolved, That the president of this company be, and he is hereby, directed to borrow or loan a sum of money not exceeding fifteen thousand dollars, to be used for the purposes above recited, and to sell, pledge, hypothecate any bonds or securities belonging to the company for the purpose of raising said amount upon the best terms that he may be able to raise the same.

Resolved, That the president be requested, as soon as the funds above required are obtained, forthwith to proceed to Milwaukee and to pay such claims and incumbrances against the said company as are indispensable to save the real estate and improvements thereon, and to prevent the sacrifice which will otherwise be made; and also that the said president be requested to ascertain and obtain reliable information as to any or all unpaid claims for right of way or for any real estate which has been purchased by deed or appraisal for the use or benefit of said company; also to ascertain the location or value of such real estate incumbered as above stated, and report upon the above as fully as practicable at a meeting of board of directors to be held in the city of Albany on the 5th day of January next, and if not, state whether any preamble and resolutions in substance like these were passed at such meeting of said board.

Ans. I was present at said meeting of said board of directors on the 13th December, 1858, in the city of Albany, N. Y., at which meeting the said preamble and resolutions were adopted.

36 ques. State whether the recitals in the said preamble and resolutions were believed to be true by the said directors present at said meeting when the same were passed, and state whether you acted under said resolutions in borrowing said sums of money from Gould, Gilbert, Watson and Foster?

463 Ans. As far as my knowledge is concerned, they were believed to be true by such directors; I certainly believed them to be true, and I acted under such belief and resolutions in borrowing said sums of money.

37 ques. Were you present at a meeting of a board of directors held at the office of said company in the city of New York, on the 17th day of December, 1858? and if yea, did Selah Chamberlain notify said board of directors that the said twenty thousand dollar note hereinbefore mentioned against said company was due, and that he required the funds? and if yea, were the following proceedings had by said board upon said notice? viz:

On motion a committee of three, consisting of G. W. Luther, William Platt, and A. C. Gunnison, were appointed with full power to settle the same if possible.

The president submitted the following notice, received from Messrs. Meigs & Greenleaf, to wit:

OFFICE OF MEIGS & GREENLEAF,
No. 50 *Exchange Place, Dec.* 18, 1858.
NEW YORK, *Dec.* 18, 1858.

N. P. Stanton, esq., president of La Crosse and Milwaukee R. R. Co., New York:

DEAR SIR: You will please take notice that we hold the note of your company dated August 6, 1858, at four months, for twenty thousand dollars and interest, and due the 9th instant, with four hundred thousand third mortgage bonds as collateral, and that if said note is not paid on or before the 25th instant, we shall proceed to sell the securities pledged for payment of said note.

Yours truly, MEIGS & GREENLEAF.

On motion, the committee on funding the floating debt were requested to settle the same, as the president was about to leave for Wisconsin, and would be absent at the time mentioned, to wit, the 25th instant.

And if not, what proceedings were had thereon?

Ans. I was present at said meeting of the said board of directors on the 17th day of May, 1858; Selah Chamberlain did
464 notify said board of directors that the said twenty thousand dollar note was due, and the proceedings stated in the 37th question were had by said board.

38 ques. Do you remember that you had received the notice from Meigs & Greenleaf mentioned in the last preceding interrogatory?

Ans. I distinctly remember receiving the notice and laying it before a meeting of the board of directors.

39 ques. Were you present at a meeting of a board of directors of said company at Milwaukee on the 14th day of February, A. D. 1859? If yea, state whether a quorum of said board attended, and whether or not said board at said meeting approved the said proceedings of said meeting of the said board held on the 13th day of December, 1858, at Albany, in the State of New York, and the meeting of said board held in New York city on the 17th day of December, 1858, before mentioned.

Ans. I was present at the said meeting of the board held in Milwaukee on the 14th February, 1859; a quorum was present; said board at said meeting did approve the proceedings of the said meeting held at Albany, N. Y., December 13, 1858, and of the proceedings of the said meeting held in New York city, December 17, 1858.

40 ques. Do you know of any other matter or thing which may or can be of benefit or advantage to either or any of the parties to this suit? If yea, set the same forth fully and at large.

Ans. Nothing presents itself to my mind just now.

Cross-examination:

1 cross-ques. State whether or not you, as an officer or director of the La Crosse and Milwaukee Railroad Company, ever voted for any resolution authorizing the payment of what were known and called the "Barstow bonds" and the "corruption bonds?" If yea,

state whether the resolution referred to in the direct interrogatory contemplated the paymant of any of the said bonds, or were said bonds, or any of them, included in the floating debt of the said company or other just indebtedness of said company.

Ans. I never recognized the "Barstow bonds" and the so-called "corruption bonds" to be any lien against the company, or of any value to the holders; land bonds were not included in the "floating debt" or other just indebtedness of said company.

2 cross-ques. If you shall answer the interrogatory by saying that the board of directors of said company did pass a preamble and resolution of the character set forth in said interrogatory, state the amount of the co-called "floating debt" and the *the* just indebtedness which said issue of bonds was intended to pay, and state how much and what portion of the said "floating debt," or said
465 floating indebtedness or just indebtedness, was made up of the said "Barstow bonds" or "corruption bonds."

Ans. I can't state the amount of the "floating debt" and "just indebtedness," but said "Barstow bonds" and "corruption bonds" were not included in said "floating debt" or "just indebtedness."

3 cross-ques. How, and in what manner, and for what purpose, were the said "Barstow bonds" and "corruption bonds" issued, and to what amount? and state whether you, or any officer or director of the La Crosse and Milwaukee Railroad Company, ever had in your or their possession, or under your or their control, any of the said "Barstow bonds" or "corruption bonds," and did you or they receive in lieu of said "Barstow bonds" or "corruption bonds" any of the said third mortgage bonds. If yea, give the name of the officers or officer, and the amount.

Ans. I can't now state the particulars in reference to the issuing and disposition of said "Barstow bonds" and "corruption bonds;" I only know that I was satisfied while president that they were no just lien upon the property of the company, and so looked upon them and treated them during my official term; I know of no director or officer of the company that ever exchanged any of said Barstow or corruption bonds for said third mortgage bonds.

4 cross-ques. If you shall say in answer to the direct interrogatory that you know that said third mortgage bonds so called had circulated, been bought and sold, and passed from hand like other similar securities, please state whether said bonds ever were offered on 'change or at any public board of brokers, or in any of the usual and public places of sale of such securities in New York city; if yea, state the place or places, and by whom. Were not said bonds in disrepute? Could buyers be readily obtained for them? How do you know they circulated and were bought and sold like other similar securities? State the name or names of the party or parties who purchased them and the prices paid therefor, and give the name of each purchaser, the amount purchased, and the price paid, so far as you know or remember the same, and state the same fully and particularly.

Ans. Said bonds were never offered at a public board of brokers

in New York city; they were not considered very valuable; buyers, at the prices they were held at, could not readily be obtained; I have bought and sold the same bonds and stocks issued in lieu of said bonds by the Milwaukee and Minnesota company; I bought $10,000, the par value of said bonds of Meigs & Greenleaf, New York city; I also bought $10,000 of the Milwaukee and Minnesota stock which was issued in place of said bonds—they having been retired—of said Meigs & Greenleaf; for said $10,000 of bonds and $10,000 of stock I paid ten cents on the dollar to said Meigs & Greenleaf; the
466 said $10,000 of bonds I sold to O. R. Brown for the same price that I gave; I bought $5,000 of stock of William Barnes, of Albany, for, I think, about seven cents on the dollar; I bought $10,000 of the stock, of S. H. Alden, of Albany; I sold $6,000 to E. B. Holmes, Rockport, N. Y., for, I think, eight cents on the dollar; I sold A. S. Bright, of New York, $4,000, for, I think, fifteen cents; I sold Mr. ——, through A. C. Gunnison, $25,000 of stock for, I think, seventeen and a half cents; I give the name of purchaser in blank, as it was not disclosed to me by Mr. Gunnison; of my own knowledge that A. C. Gunnison bought, I think, two thousand dollars par value of the bonds of Radcliffe; I think at five cents, but am not certain as to price; I recollect of buying two thousand dollars worth of Radcliffe myself at the same price, I think; these are all the sales that I can now recall of which I had personal knowledge; I have been informed of other sales; I was informed by F. P. James and by A. W. Bright that James had sold Bright one hundred thousand dollars of said stock at ten cents on the dollar; all these purchases and sales have been since the foreclosure of the Barnes mortgage.

5 cross-ques. Have you answered the last cross-interrogatory to the best and utmost of your knowledge, information, recollection, and belief, without any mental reservation, and stated minutely all that you know about the circulation, sale, transfer, or passing from hand to hand, of said so-called third mortgage bonds? If nay, state the same fully and particularly in answer to this interrogatory.

Ans. I have answered the question without mental reservation; I have answered to the best of my recollection, knowledge, information, and belief, as to all sales and transfers within my personal knowledge, and have mentioned the sale of James to Bright as one which I was informed; I now state that I believe such sale was made, upon such information, and I also now answer, as this question calls it out, that according to best information and belief, many transfers and sales of said bonds were made of which I now recollect the following: Wm. A. Guest, a broker in railroad securities in New York, has at different times, since the sale of the road under the Barnes mortgage, inquired of me for purchasers and sales of this stock; also C. C. Carpenter, of Exchange Place, New York, No. 51, has informed me that he was the owner of a large amount of this stock, and wanted to purchase of me; this was within the past two years; I did not sell to him, as he did not offer me what it was worth; this is all I think of now; I have stated the time and place of these transactions as near as I can.

6 cross-ques. Was there at any time, and when, a market value to said third mortgage bonds? If yea, what was the value of the
467 same? What is the highest price in cash you have known paid for said third mortgage bonds? Who paid it and when? and how many were purchased at the price?

Ans. There was, always; I have known them to sell for ten cents on the dollar cash; I paid that myself; that was the highest cash price that I know or can think of; I paid that price for $10,000 par value of the bonds, paid it to Meigs & Greenleaf; this purchase, I think, was in the year 1860 or 1861; this is as near as I can give the time.

7 cross-ques. What is the correct price in cash you have known paid for the said so-called third mortgage bonds? When, where, and to whom paid?

Ans. I don't think of any sales lower than the one to Gunnison and me by Radcliffe at five cents, which was in the year 1860, I think, at New York city.

8 cross-ques. Did you, as an officer of the La Crosse and Milwaukee Railroad Company, or in any capacity, advise or consult with one Matt. H. Carpenter, of Milwaukee, as to the validity of the said sale of the said Barnes under the third mortgage? What steps did you take under his advice about said sale? What advice did he give you about said sale?

Ans. I don't remember of ever consulting said Carpenter with reference to the validity of said sale at any time.

9 cross-ques. Do you know the fact that said Carpenter ever, at any time, and when, claimed said sale fraudulent or void? If yea, state when and where, and to whom, and under what circumstances he claimed said sale fraudulent or void.

Ans. I have no knowledge of such fact.

10 cross-ques. Did not said Matt. H. Carpenter file complaints and bring suits to enjoin the sale? Have you not heard the said Matt. H. Carpenter say that said sale was fraudulent and void? State where and when?

Ans. He might have done so, but I don't remember; I have not heard said Carpenter say that said sale was fraudulent and void; I had no business with said Carpenter.

11 cross-ques. State what effort, if any, were made by the La Crosse and Milwaukee Railroad Company, or the officers of that company, to stop the sale under the Barnes mortgage. What was done by said company or said director about said sale?

Ans. No efforts were made by said La Crosse and Milwaukee Railroad Company, or its officers, to stop the sale, and no action was taken by said company about said sale.

12 cross-ques. State whether or not any, and what, proportion of farm mortgage indebtedness of the said La Crosse and Milwaukee Railroad Company was paid by the said third mortgage bonds.

Ans. I have no knowledge of any having been paid.

468 13 cross-ques. What amount was realized to said La Crosse and Milwaukee Railroad Company, or about what amount, from

the entire issue of said bonds secured by said Barnes mortgage? State fully.

Ans. I should say, from my present recollection, about three-quarters of a million; I estimate this as follows: Five hundred thousand dollars for the farmers, not used; four hundred thousand to Chamberlain, for which we realized but twenty thousand; about three hundred thousand dollars to Gould, Foster, Watson, and Gilbert, for which was realized only about fifteen thousand dollars, which leaves about three quarters of a million of dollars which was disposed of for indebtedness at par.

14 cross-ques. Have you ever had, or owned, or held, either for yourself or your friends, or has any one held, had, or owned for you, or your benefit, any of the third mortgage bonds?

Ans. My answer to previous cross-questions on this examination answers this question; I have in such answers stated all the stock in the Milwaukee and Minnesota Railroad Company, and all the third mortgage bonds, I have bought, sold or owned, or held for myself and others.

15 cross-ques. How many of said third mortgage bonds were actually sold to bona fide purchasers and paid for in cash to your knowledge? State whether or not you have ever known of a bona fide sale of any of said bonds to any party for cash. If yea, give the name of the purchaser or purchasers, where purchased, when purchased, and the price paid, and state the same in detail as fully and particularly as you can.

Ans. If the question means outside of the company, I cannot state more fully and in detail than I have already stated in answers to previous cross-interrogatories; if it means by the company, we are not allowed by our charters to sell for less than par, and of course no bonds were sold by the company for cash, because they would not bring par.

16 cross-ques. Have you answered the last cross-interrogatory as fully as you can, according to your best knowledge, remembrance, and belief? If nay, make such additional explanations as you may desire in answer to this interrogatory?

Ans. I have answered fully, according to my best knowledge, remembrance, and belief, and have no explanation to make.

17 cross ques. State what particular necessity, more than there had been, existed for the making of the said third mortgage at the time the same was made? Was it not a fact, and did you not know it, that at the date of the said mortgage the credit of the said La Crosse Railroad Company was in bad repute? Did you not then know, and did you not believe, that said third mortgage bonds could not find a sale in the market at any thing like par?

469 Ans. The floating debt of the company became daily more and more pressing, which we desired to pay, as an act of justice to the parties, as well as saving annoyance to ourselves; the coupons in the land-grant bonds would be due the first of August, which coupons we were in hopes to be able to pay with the third mortgage bonds; the farmers were more and more clamorous, and threatened

destruction to the road, which farmers we were in hopes to conciliate and settle with, with these new third mortgage bonds; for these reasons the necessity was greater on the 21st of June than at any previous time; I was aware of the fact that the credit of the company was in bad repute at this time; I did know, or at least had no doubt, that said third mortgage bonds could not be sold in market for cash for anything like par.

18 cross-ques. Did you not know that the second mortgage bonds of said company had sold at a greatly depreciated price in the market but a short time previous? Was it not the fact that the second mortgage bonds of said company had been sold at only about fifty cents on the dollar?

Ans. I was aware that the second mortgage bonds had been sold at fifty cents on the dollar, but this was not owing to the interest not being paid, or to the inability of the company to pay the interest, but to the bad repute of the company on account of other previous transactions occurring before my official connexion with the company; I considered these second mortgage bonds the best security in the market at that price, and invested all my spare funds in them.

19 cross-ques. State what efforts you made and what efforts were made by the directors of said company, to sell bonds, and state what was the demand for said bonds.

Ans. I know of no efforts being made to sell them, and no demand except from creditors.

20 cross-ques. Who of the officers of said railroad company were most efficient in selling or attempting to sell said bonds? How many of said bonds were sold at private sale by the officers of said company?

Ans. I know of no officers of said company selling any of said bonds either at private or public sale.

21 cross-ques. When it was found that said bonds could not be sold except at a great discount, why did said company or said officers still continue to press the sale of said bonds at such sacrifice? Why did they not stop the sale?

Ans. I know of no director or officer ever selling any of said bonds for cash; they were all disposed of as I have before stated in this examination, except that I have omitted to state that we exchanged the bonds for land-grant coupons, at the rate of seventy cents on the dollar for the bonds; in all other cases said bonds were disposed of to creditors at par, and in many cases above par, as in those in-
470 stances we required of the creditors a discount on his claims against the company.

22 cross-ques. What steps did you as an officer of that company take to prevent a sacrifice of the said bonds? State all that you did, and the efforts you made?

Ans. If the question has reference to the bonds that had been hypothecated, I have already stated in full what efforts I made; if it means the other bonds that were used by the said company in paying its just debts, I know of no sacrifice being made.

23 cross-ques. Have you ever at any time, and when, been an owner of or in any way or manner whatsoever been directly or indi-

rectly interested in the stock of the so-called Milwaukee and Minnesota Railroad Company? If yea, state when and to what extent.

Ans. I have heretofore in my answers to the cross-interrogatories stated in full and in detail my interest directly and indirectly in the stock of said Milwaukee and Minnesota Railroad Company.

24 cross-ques. Do you know of any other matter or thing of benefit to the parties? If yea, state the same fully.

Ans. I can think of nothing else now.

N. P. STANTON.

Sworn to and subscribed before me, April 18, 1865.

F. BLOODGOOD, *Examiner in Chancery*.

471 In the circuit court of the United States of America for the district of Wisconsin, in equity.

FREDERIC P. JAMES, ABRAM M. BREWER, E. Bradford Greenleaf, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, J. Howard Mitchell —
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company, The La Crosse and Milwaukee Railroad Company, and Selah Chamberlain.

The deposition of Selah Chamberlain, a witness on behalf of the complainants, before Francis Bloodgood, examiner in chancery, at his office, in the city of Milwaukee, May 20, 1865.

Present: M. H. Carpenter, esq., of counsel for the defendant, the Milwaukee and Minnesota Railroad Company, and M. H. Finch, esq., of counsel for the complainants.

472 Selah Chamberlain, having been previously sworn by the examiner, (at his previous examination in this cause on behalf of the defendants,) being recalled as a witness for the complainants, testified as follows:

My name is Selah Chamberlain; my age, fifty years.

Ques. Did you in 1858 operate the La Crosse and Milwaukee Railroad—in December, 1858?

Ans. I did; I knew the property in the city of Milwaukee known as the roundhouse property, belonging to said company. In December, 1858, the title of this property was not in the La Crosse railroad; it was in the name of Charles H. Williams, administrator of the estate from whom the property was bought, (administrator or trustee.) The La Crosse and Milwaukee R. R. Company at that time held a contract for the purchase of the property upon which they used, a balance of about ten thousand. About the 1st of December, 1858, Mr. Williams wanted a payment that was then past due on the contract, of between five thousand and six thousand dollars; he had threatened to commence a suit unless the money was paid; I had talked with the directors of the company, and offered to pay the sum due, and assume the balance to grow due on the contract, on condi-

tion that they would give me the title to the property as security for the sum advanced and assumed. About the last of December or first January, Mr. Stanton, president of the company, came here to Milwaukee; he brought out some twelve thousand dollars in money, as he told me, to pay the amount due on the property, and have the deed taken in the name of the company; he did make one payment, a sum equal to one half that was due; the balance of the money he brought out he paid to directors, legal counsel, &c., for services; the amount paid for these services was about six thousand dollars; one thousand and fifty dollars was paid Mr. Ryan for legal services; Mr. Richards, transfer agent in New York, had eleven hundred and some odd dollars of it; he paid for office expenses in New York three hundred and nine odd dollars; I can state the names of some of the directors that received payments, viz: Wm. A. Guest, Seth R. Foster, Mr. Luther, Mr. Shear, Mr. Radcliffe, Mr. Platt, Mr. McGregor, Mr. E. Smith; I can't state the exact amount each received; the whole amount paid for these services and persons, as I have stated, was about six thousand dollars.

He also paid Green C. Bronson, of New York, trustee on the land-grant and second mortgage, the sum of five thousand two hundred and some odd dollars; don't know on what account; Stanton was dissatisfied with this disposition of the money; it was done by vote of board of directors of said company; before Stanton came to Milwaukee as aforesaid, I had made an arrangement with Williams to pay the amount of the incumbrance to him, provided the company would let the property be deeded to me, as security, as I have before stated; at that time I had the money to carry out the arrangement with Williams, and should have done so if the directors had given me the security; I so stated to Stanton at that time; the amount of money Stanton paid only lifted about half the incumbrance.

473 Prior to the date of the Barnes mortgage I had been familiar with the pecuniary condition of said company. It was at the date of the execution of the mortgage and supplement to Barnes, and I suppose had been, bankrupt from the fall of 1857, unable to pay right of way claims, and did not pretend to pay anything. The bonds secured by the so-called Barnes mortgage were not considered as having any market value. The highest price in cash I have ever known to be given for those bonds was five cents on the dollar. These bonds never had, to my knowledge, a place on any stock board in the United States.

All the foregoing testimony was taken, subject to objection, by defendants as to its competency and materiality, taken in proper time.

S. CHAMBERLAIN.

Sworn to and subscribed before me, 20 May, 1865.

FRANCIS BLOODGOOD,

U. S. *Court Com'r and Examiner in Chancery.*

474 United States circuit court, district of Wisconsin, in equity.

FREDERICK P. JAMES *et als.*
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company *et als.*

I, Francis Bloodgood, examiner in chancery, do hereby certify and report that the following proceedings were had before me in the above-entitled cause, to wit: Nov. 28, 1864. On filing affidavit No. one, of Austin Gunnison, hereto annexed, and upon application of M. H. Carpenter, esq., solicitor of the Milwaukee and Minnesota Railroad Company, one of the def'ts, I made an order that the testimony to be adduced in this cause be taken orally, &c., and that a copy of said order be served on compl'ts, which said order is hereto annexed; same day said order was filed with affidavit of service thereof; also affidavit of service of a notice on complainants' solicitors of the examination of E. G. Ryan, all of which are hereto annexed.

Nov. 30, 1864.—Pursuant to notice complainants appeared by H. M. Finch, esq., of counsel, and the Milwaukee and Minnesota Railroad Company, by M. H. Carpenter, esq., of counsel, and the depositions of E. G. Ryan and W. P. Lynde, on behalf of the def'ts, were taken and subscribed.

Dec. 15, 1864, 10 a. m.—Complainants appeared by H. M. Finch; the Milwaukee and Minnesota Railroad Company, def'ts, appeared by A. Gunnison; Selah Chamberlain was in attendance as a witness on behalf of the def'ts, the Milwaukee and Minnesota Railroad Company, pursuant to subpœna served upon him; the Milwaukee and Minnesota Railroad Company reported that Russell Sage had been subpœnaed as a witness in their behalf to appear before the examiner Dec. 15, 1864, 10 a. m., and that they would file proof of the service of a subpœna on him. The witness, Russell Sage, did not appear. On motion of the Milwaukee and Minnesota Railroad Company, the 19 Dec., 1864, 10 a. m., was fixed for the examination before the examiner, at his office, of such witnesses as the said def'ts might produce—to which time this matter was thereupon adjourned.

Dec. 19, 1864.—The parties appeared by the same counsel, and the deposition of Selah Chamberlain, on behalf of the defendants,
475 (who appeared by Mr. Carpenter,) was taken and subscribed.

December 21, 1864.—Parties appeared as before, and the complainants filed proof of the service of order and notice for taking their testimony. Same day complainants called as a witness Austin Gunnison, who, being sworn, the taking of his deposition was commenced, and not being concluded, was adjourned to Dec. 22, 1864, 10 a. m.; when the parties appeared as before, by their respective counsel, and Josiah A. Noonan was sworn, and his deposition taken and subscribed by him on behalf of complainants. Austin Gunnison was recalled and the taking of his deposition resumed, and, not being concluded, was adjourned to Dec. 23, 1864, at which time the complainants appeared by M. H. Finch, esq., their counsel. The witness Gunnison was in attendance, and stated that Mr. Carpenter, counsel

for the Milwaukee and Minnesota Railroad Co., had been suddenly called away from the city, and desired an adjournment till Dec. 26, 1864, at a. m., to which adjournment complainants' counsel consented, and the adjournment was granted.

Dec. 26, 1864.—Pursuant to adjournment the parties appeared as before by their respective counsel. The witness Gunnison being in attendance, the taking of his deposition was continued, and not being concluded, adjourned to Dec. 29, 1864, 10 a. m., when the complainants appeared by A. Finch, esq., of counsel, and the witness, A. Gunnison, in attendance. On motion of Mr. Finch—and the witness, A. Gunnison, consenting thereto—adjourned to Dec. 30, 1864, at 10 a. m., when the matter was again adjourned to Dec. 31, 1864; when the parties appeared pursuant to adjournment, and the examination of the witness Gunnison was resumed, and not being concluded, adjourned to January 2d, 1865, when complainants appeared by H. M. Finch, esq., and the examination of the witness Gunnison was continued, and not being concluded, adjourned to Jan'y 3d, 1865, 10 a. m.; when the examination of A. Gunnison was continued, and not being concluded, adjourned to January 4th, 1865, when the examination of the witness Gunnison was continued, and, not being concluded, adjourned to Jan'y 5, 1865, 10 a. m., at which time the complainants appeared, by H. M. Finch, esq., their counsel. The witness, Gunnison, being in attendance, requested an adjournment to January 9, 1865, 10 a. m., and, the complainants consenting, adjourned to such time.

476 January 9, 1865, 10 a. m.—The complainants appeared as before, and there being no appearance on the part of the defendant or the witness, adjourned, on motion of the complainants, to January 13, 1865, 10 a. m.; at which time there was no appearance by either party.

January 16, 1865.—Subpœna for Alexander Mitchell and Asahel Finch to appear before the examiner, January 15, 1865, 2 p. m., at which time the parties appeared as before, by counsel, pursuant to notice on the part of the defendants to take testimony of Alexander Mitchell and Asahel Finch. The witness Mitchell being in attendance, on motion of the complainants, adjourned January 19, 1865, at 2 p. m.

January 19, 1865.—Deposition of A. Mitchell taken and subscribed on behalf of the Milwaukee and Minnesota Railroad Company.

January 23, 1865.—The deposition of A. Gunnison was concluded, and hearing adjourned to Jan. 24, '65, when there was no appearance.

April 12, 1865.—Witness, A. Gunnison, appeared, and having read over, subscribed his deposition.

April 17, 1865.—N. P. Stanton sworn, and his deposition, taken on behalf of the defendant, Milwaukee and Minnesota Railroad Company, commenced, the parties being in attendance as before.

April 18, 1865.—Deposition of N. P. Stanton concluded and subscribed.

And I do further certify that the said depositions, to wit, on be-

half of complainants, Austin Gunnison, Josiah A. Noonan, Selah Chamberlain, Nehemiah P. Stanton, and on behalf of the defendants, E. G. Ryan, Wm. P. Lynde, S. Chamberlain, and Alexander Mitchell, together with the exhibits attached to some of said depositions, (which depositions and exhibits are herewith returned,) is all the testimony introduced before me in said cause as such examiner.

And I do further certify that the bodies of said depositions and the captions thereof, together with this report, show all that occurred before me as said examiner, on the taking of the testimony in this cause; all of which is respectfully submitted.

Dated July 5, 1865.

FRANCIS BLOODGOOD, *Examiner, &c.*

To the honorable the JUDGES of said court.

477 Circuit court United States for the 9th circuit and district of Wisconsin, in equity.

FREDERICK P. JAMES and OTHERS
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company and others.

To Finches, Lynde & Miller, solicitors for complainants:

GENTS.: Please take notice that the testimony of Edward P. Ryan, esq., a witness to be produced, sworn, and examined on behalf of the Milwaukee and Minnesota Railroad Company, one of the defendants in this cause, will be taken before Francis Bloodgood, esquire, an examiner and commissioner of said court, on the 30th day of November, A. D. 1864, at the office of the said Bloodgood, in the city of Milwaukee, at 10 o'clock a. m. of that day, and you are notified to be present at that time and cross-examine said witness, if you desire.

Dated November 28, 1864.

MATT. H. CARPENTER,
Sol. for said Defendant.

DISTRICT OF WISCONSIN, *ss:*

Austin Gunnison, being duly sworn, on oath says that Jed. P. C. Cottrill, esq., late commissioner and examiner of said court, has resigned his said office and appointment as commissioner and examiner as aforesaid; and further says that at Milwaukee, in said district, on the 28th day of November, A. D. 1864, he served upon Finches, Lynde & Miller, solicitors in this cause, a notice, of which the within, above, and foregoing is a true copy, by delivering the same to and leaving the same with B. K. Miller, a member of said firm of Finches, Lynde & Miller, and one of the solicitors for the said complainants in the above-entitled cause, at the office of said firm, during business hours, on the day and year last aforesaid.

AUSTIN GUNNISON.

Subscribed and sworn to before me this 28th day of November, A. D. 1864.

FRANCIS BLOODGOOD,
U. S. Circuit Court Com'r, District of Wisconsin.

478 Circuit court of the United States for the 9th circuit and district of Wisconsin, in equity.

FREDERICK P. JAMES and OTHERS
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company and others.

DISTRICT OF WISCONSIN, *ss:*

Upon the application and motion of Matt. H. Carpenter, solicitor for the Milwaukee and Minnesota Railroad Company, one of the defendants in this cause, that the testimony to be adduced in said cause be taken orally; and it appearing to my satisfaction that notice thereof, a copy of which is hereto attached and marked Exhibit No. 1, has been duly served upon the solicitors for the complainants in this cause, I hereby order that the same be so taken, and that the testimony of Edward P. Ryan, esq., who is shown to my satisfaction to be a material and necessary witness in this cause on behalf of said company defendant, be taken before me orally at my office in the city of Milwaukee, in said district, on the 30th day of November, A. D. 1864, at 10 o'clock a. m. of that day; and ordered that a copy of this order be served on Finches, Lynde & Miller, the solicitors of said complainants in said cause, this day, and that the said solicitors for said complainants attend said examination at that time, and cross-examine said witness, if they desire so to do.

Dated November 28, A. D. 1864.

FRANCIS BLOODGOOD,
U. S. Circuit Court Com'r, District Wisconsin.

Exhibit No. 1.

Circuit court of the United States for the 9th circuit and district of Wisconsin, in equity.

FREDERICK P. JAMES and OTHERS
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company and others.

To Finches, Lynde & Miller, solicitors for complainants:

GENTS.: Take notice that Jed. P. C. Cottrill, esquire, late com-
479 missioner and examiner of said court, having resigned his said offices and appointments as such commissioner and examiner, the said Milwaukee and Minnesota Railroad Company desire the evidence to be adduced in this cause to be taken orally, and before Francis Bloodgood, esq., an examiner of said court, at his office in the city of Milwaukee, in said district.

Dated Nov. 28th, 1864.

MATT. H. CARPENTER, *Sol. for said Def't.*

DISTRICT OF WISCONSIN, *ss:*

Austin Gunnison, being first duly sworn on oath, says that Jed. P. C. Cottrill, esq., late commissioner and examiner of said court, has resigned his said offices and appointments as commissioner and examiner as aforesaid, and further says that at Milwaukee, in said district, on the 28th day of November, A. D. 1864, he served upon Finches, Lynde & Miller, solicitors in this cause, a notice, of which the within, above, and foregoing is a true copy, by delivering the same to and leaving the same with B. K. Miller, esq., a member of said firm of Finches, Lynde & Miller, and one of the solicitors for the said complainants in the above-entitled cause, at the office of said firm during business hours on the day and year last aforesaid.

AUSTIN GUNNISON.

Subscribed and sworn to before me this 28th day of November, A. D. 1864.

FRANCIS BLOODGOOD,
U. S. Circuit Court Com'r, District of Wisconsin.

DISTRICT OF WISCONSIN, *ss:*

Austin Gunnison, being first duly sworn, on oath says that at Milwaukee, in said district, on the 28th day of November, A. D. 1864, he served on Finches, Lynde & Miller, solicitors for complainants in said cause, a copy of the foregoing order and exhibit thereto attached, by delivering the same to and leaving the same with B. K. Miller, a member of the said firm, at the office of said firm at Milwaukee, in said district, during business hours on said day.

AUSTIN GUNNISON.

Subscribed and sworn to before me this 28th day of November, A. D. 1864.

FRANCIS BLOODGOOD,
U. S. Circuit Court Com'r, Dist. Wisconsin.

480 *Deposition of Stoddard Judd.*

Circuit court of the United States for the district of Wisconsin, in equity.

FREDERICK P. JAMES and OTHERS
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company *et al.*

We hereby stipulate that the testimony of Dr. Stoddard Judd may be taken to be read in this case here and now, before James Mitchell, commissioner of State circuit court, with same effect as though taken before the examiner.

Dated May 15, 1865.

MATT. H. CARPENTER,
Sol. for Mil. and Minn. R. R. Co.
FINCHES, LYNDE & MILLER,
Sol's for Compl'ts.

Testimony of Stoddard Judd under the foregoing stipulation.

Stoddard Judd, being duly sworn, deposes and says: My name is Stoddard Judd; my age is about sixty-eight years; I reside in Fox Lake, Wisconsin; I am the same Stoddard Judd who entered into certain bonds with the La Crosse and Milwaukee railroad in regard to certain bonus secured by the Barnes mortgage, so called.

A paper marked "Exhibit No. 1" is here shown to the witness, which stipulation and exhibit is attached to and returned with this deposition.

Ques. Are these copies of contract the contracts referred to by you above?

Ans. I have no doubt but these are correct copies of the contracts entered into by me, and of which I spoke in my testimony above; I recollect the fact of the foreclosure of the Barnes mortgage by advertisement; I was present at the sale; these bonds, to the amount of $549,800 were placed into my hands under these contracts before the foreclosure; $400,000 were placed in my hands personally by some officer of the company, and I was informed by the acting secretary of the company, Whaling, that $150,000 had been placed in his hands for me, but not having seen me so that he could deliver them to me, and being about to leave the office, he had made a special deposit in Mr. Mitchell's bank of $149,800 of those bonds, and
481 had retained a bond of $200 to pay him for his own services; on inquiring at the bank to-day and before this, I found the packages marked in my name and as a special deposit for me; I did not count the amount, but have no reason to doubt but the correct amount has been stated on these packages.

Ques. Previous to this foreclosure have you disposed of any of these bonds, and what amount, under the trust created by these contracts?

Ans. I had disposed, in pursuance of those contracts, of $5,550 in bonds of various denominations; there was no denomination less than one hundred dollars; there was going to Williams $750; I gave him $700 in bonds, and took a $100 bond and marked on the wrapper I put it in that fifty dollars of it belonged to Williams, and the balance to the trust; I assented to the foreclosure, and signed the articles of organization of Milwaukee and Minnesota Railroad Company for the balance of the bonds in my hands.

Ques. Have any of these bonds been disposed of by you, and how, since the organization of the Minnesota company?

Ans. Yes, $5,000 of them I converted into stock of the Minnesota company in my own name for the purpose of paying me for the execution of the trust, as I was informed by the officers of the company I was entitled to do, and the balance of the bonds still remain in my hands to the amount of $539,250.

Cross-examination:

I was at one time president of the La Crosse and Milwaukee Railroad Company; I was president from some time in October, 1853, till some time in February, 1856; I had executed to the company two

farm mortgages; one was while I was president, and the other, I think, while president, in the aggregate amounting to $3,000; at the time of the execution of the trust I had not paid to the company or the holder of said mortgages said amount; I have never paid said mortgages; I did take some of third mortgage bonds, the amount being $1,500, to which I was entitled as a farm mortgagor under the trust; that is included in the amount stated as disposed of by me under the trust; the company executed to me at the time I gave my mortgage the usual form of contract, to save me harmless from interest on my mortgages; there were other stipulations in the contract which I do not now recollect, but I do not think there was a stipulation to pay ten per cent. on the stock.

Ques. Did you surrender up to the railroad company the contract or obligation executed by the company to you upon your giving up your mortgage to the company?

Ans. I was trustee and agent for the company to deliver these bonds to the farm mortgagors upon their surrendering their original contracts, together with their certificates of stock; from such
482 persons as I did deliver these bonds I did take a surrender of their stock and contract, and marked on the back thereof "to be cancelled," and placed them in an envelope in a drawer, and I did the same with my stock and contract, and they are all my possession yet; I did not dispose of the whole amount of the bonds prior to the foreclosure, for the reason that the farmers neglected or refused to receive them.

Ques. So then, out of the whole amount of bonds placed in your hands was you able to dispose of, in pursuance of the trust, more than the amount stated?

Ans. I was not.

Ques. State what efforts you made to induce the farm mortgagors to take the third mortgage bonds, so called, under the trust.

Ans. In answer to that, I have to say I published a notice in the Milwaukee Sentinel, also in a paper at Portage, and I think also at Horicon, Beaver Dam, and Fox Lake, stating that the bonds had been left in my hands for the purposes stated; I attended also several meetings of the farm mortgagors, and stated to them the character of the trust, and that the bonds were in my hands for their reception; I also stated the same to several individuals whom I had met, but not at public meetings.

Ques. Did you take particular pains to induce the farm mortgagors to take and accept the third mortgage bonds, in pursuance to the terms of the trust?

Ans. I took the pains I have stated above.

Ques. At the date of the contract, 4th February, 1859, between you and the company in relation to the bonds, how many, or about how many, persons or parties were there, to your knowledge, who had executed farm mortgages to the railroad company?

Ans. I can't answer that definitely; I suppose there were between ten hundred and twelve hundred; I was so informed by *by* the officers of the company, and also learned from my knowledge of its affairs;

there were no farm mortgages executed after the 4th of February, 1859; I took the largest amount of the bonds myself; that was $1,500, and I should think that there were not more than twelve that took these bonds, but I cannot recollect precisely; at or about the 4th day of February, 1859, there was outstanding of the farm mortgages to the La Crosse railroad between ten hundred and twelve hundred thousand dollars worth of farm mortgages.

Ques. Why have you not surrendered up the bonds in pursuance of the trust, and had the same cancelled?

(Objected to as immaterial.)

Ans. There were no organization or officers of the La Crosse company to whom I could deliver the same cancelled.

Ques. Why have you not surrendered all of said bonds in
483 your possession, and received in lieu thereof the stock of the Milwaukee and Minnesota Railroad Company?

Ans. Because I had no authority to do any such thing.

STODDARD JUDD.

NOTE.—The parties here agree that Dr. Judd on returning home may make a copy of his railroad contract, and enclose it by mail to me, and that I shall attach it to this deposition, with the same effect as though the original were hereto attached.

JAMES MITCHELL.

Circuit court of the United States for the district of Wisconsin, in equity.

FREDERICK P. JAMES *et al.*
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company *et al.*

In this cause we stipulate that the printed paper hereto attached, marked "Exhibit No. 1," contains copies of the resolutions of the board of directors of the La Crosse and Milwaukee Railroad Company, and the contracts between that company and Stoddard Judd, which may be read in evidence with the same effect as though the originals were produced and offered in evidence before the examiner, subject to all objections on the part of the complainants that might or could be taken against the respective originals.

Dated May 15, 1865.

MATT. H. CARPENTER, *Sol. for Def'ts.*
FINCHES, LYNDE & MILLER, *Sol's for Compl'ts.*

Whereas Stoddard Judd has executed a note and mortgage in favor of the La Crosse and Milwaukee Railroad Company, bearing date on the 7th day of February, A. D. 1853, payable ten years from the 1st day of July, 1853, for the sum of two thousand five hundred dollars, with interest annually at the rate of eight per centum from and after the said first day of July, 1853;

And whereas said note and mortgage have been received in payment for twenty-five shares of the capital stock of said company:

Now, therefore, in consideration of the relinquishment and assignment by the said Stoddard Judd to the said company of so much of the dividends of said stock which the said Stoddard Judd may become entitled to as shall be sufficient to pay the interest on said note, the company agree not to demand said interest from the said Stoddard Judd, and in case the note and mortgage shall be negotiated by said company, then said company agree to save the said Stoddard Judd harmless from said interest.

And the said Stoddard Judd hereby assigns to the said company so much of any dividends to which he may become entitled on said shares as shall be sufficient to pay off said interest, and agrees to pay said principal sum when the same shall become due.

And it is further understood that this agreement of the said company to relinquish said interest or to secure the said Stoddard Judd harmless therefrom, shall not be a defence on the part of the said Stoddard Judd against the payment of such interest, if said note and mortgage shall be in the hands of a third party as security or otherwise.

In witness whereof, the board of directors of said company have caused these presents to be signed by Edmund D. Clinton, the duly constituted agent of said company, and the said Stoddard Judd has also set his hand and seal, on this 7th day of February, A. D. 1853.

[SEAL.] E. D. CLINTON,
Agent of said Railroad Company.

[SEAL.] STODDARD JUDD.

I certify the above to be a true copy of the original contract now in my hands.

Dated Fox Lake, May 17, 1865.

STODDARD JUDD.

Whereas Stoddard Judd has executed a note and mortgage in favor of the La Crosse and Milwaukee Railroad Company, bearing date on the 28th day of June, A. D. 1855, payable in ten years from the first day of January, A. D. 1854, for the sum of five hundred dollars, with interest annually at the rate of eight per cent. per annum from and after the first day of January, 1854;

And whereas said note and mortgage have been received in payment of five shares of the capital stock of said company:

Now, therefore, in consideration of the relinquishment and assignment by the said Stoddard Judd to the said company of so much of the dividends on said stock which he may beeome entitled to as shall be sufficient to pay the interest on said note, the said company agree not to demand said interest from him, and in case said note and mortgage shall be negotiated by said company, then said company agree to save him harmless from said interest. And the said company further agree to allow ten per cent. annually until they shall declare a dividend to a greater amount than ten per cent.

And the said Stoddard Judd hereby assigns to the said company so much of any dividends to which he may become entitled on said shares as shall be sufficient to pay off said interest, and agrees to pay said principal sum when the same shall become due.

And it is further understood that this agreement of the said company to relinquish the said interest, or secure the said Stoddard Judd harmless therefrom, shall not be a defence on his part against the payment of such interest if said note and mortgage shall be in the hands of a third party as security or otherwise; nevertheless, the said railroad company agrees to pay said interest promptly.

485 In witness whereof, the board of directors of said company have caused these presents to be signed by their duly constituted agent, and the said Stoddard Judd has also set his hand and seal, this 28th day of June, A. D. 1855.

[SEAL.] E. D. CLINTON, *Agent.*
[SEAL.] STODDARD JUDD.

The above is a true copy of the original contract in my hands. Dated Fox Lake, May 17, 1865.

STODDARD JUDD.

486 *Exhibit No.* 1.—*Extract from the records of the proceedings of the board of directors of the La Crosse and Milwaukee Railroad Company.*

Records, page 388: Meeting of the directors of the La Crosse and Milwaukee Railroad Company at the La Farge House, New York city, July 16th, 1858.

[Extract.]

* * * * * * * *

"On motion, *Resolved*, That there be and is hereby set apart and appropriated five hundred thousand dollars of the third mortgage bonds of this company, to be used solely (if so many shall be necessary) in retiring the farm mortgage bonds, so called, or in securing the performance of the covenants of this company with the farm mortgage stockholders, and that the above amount, to wit, five hundred thousand dollars of said third mortgage bonds, be placed in the hands of the committee for funding the floating debt, by the president, to be used solely for the above purpose."

Record, page 993: Meeting of the board at Albany, August 11th, 1858.

[Extract.]

* * * * * * * *

Mr. Guest offered the following resolution:

Whereas by resolution passed on the day of July last,
487 the sum of $500,000 of third mortgage bonds was appropriated for the purpose of retiring and settling the farm mortgage bonds of this company: now, therefore—

Resolved, That the said appropriation be held for such purpose until the 15th day of December next, and that the president be directed to

issue a circular giving notice to the mortgagors, and that all third mortgage bonds not used for the above purpose after the said 15th day of December next be cancelled.

Adopted unanimously.

Record, page 459: At a meeting at Albany, January 5th, 1859, of the board of directors, the following resolution was passed unanimously:

"*Resolved*, That the president of this company be, and he is hereby, authorized and directed to assign to Stoddard Judd, of Fox Lake, Wisconsin, in trust for the uses and purposes hereinafter mentioned, third mortgage bonds to the amount of five hundred and fifty thousand dollars, being part of the six hundred thousand dollars of said third mortgage bonds heretofore, by resolution of this board passed October 23, 1858, directed to be set apart to provide for the farm mortgage bonds and relieve the mortgage stockholders. 1st. The said Stoddard Judd, trustee, to deliver to any farm mortgage stockholder third mortgage bonds in amount equal to one-half of the amount of the mortgage stock held by such stockholder, on surrender by him of the obligation or contract held by him binding this company to pay the interest on his mortgage and note, and to make a dividend of ten per cent. on such stock, the said trustee to cancel and surrender to the company the stock and obligations of this company so surrendered by the stockholders, and this trust to be executed only in case such farm mortgage stockholders shall accept and avail themselves of the same on or before the first day of May next. 2d. To cancel and return to William Barnes, of Albany, the trustee named in the
488 trust deed securing said third mortgage bond, or his successor in said trust, all of the said five hundred and fifty thousand dollars of third mortgage bond so assigned to said Stoddard Judd in trust, that shall not be used for the above first mentioned purpose by the 1st day of May, A. D. 1859. And it shall be the duty of the said Stoddard Judd to give reasonable notice to all farm mortgage stockholders of this trust and the terms thereof, and to use all reasonable endeavors to enable all farm mortgage stockholders to avail themselves of the provisions for their relief and benefit intended to be made by this resolution and the assignment to be made by virtue hereof."

Adopted unanimously.

Record, page 416: At a special meeting of the board of directors of the La Crosse and Milwaukee R. R. Co., held at the office of the company, in the city of Milwaukee, on the 12th of October, 1858. Present: N. P. Stnnton, president, J. P. McGregor, A. Noxon, A. C. Gunnison, Wm. Platt, Wm. E. Smith.

[Extract.]

The secretary was directed to read the minutes of meetings of the board of directors held at the following dates, viz· The minutes of the meetings of this board held at the office of the company in the city of Milwaukee on the 2d day of June, 1858, and of the several meetings of the board held at the office of the company in the

city of Albany on the 8th, 15th, 16th, and 26th of June, 11th of August, and 3d, 6th, and 18th of September, and at the city of New York on the 29th of June, and the 8th, 9th, 15th, 16th, and 27th of July, 6th of August, and 22d of September, 1858.

Whereupon the secretary read the minutes as above directed.

On motion, the resolution passed at the evening session on the 16th July, 1858, in reference to the cancellation of the two per cent.
489 convertible bonds, be corrected by prefixing the word "vice" to the word president, so that it shall read vice-president.

Correction adopted as proposed.

Resolved, That the proceedings of each and every of said meetings as corrected be, and they are hereby, approved, notified, and confirmed.

Record, page 472: At a meeting of the board in Milwaukee, February 14th, 1859, at Milwaukee, Wisconsin, the following directors were present, to wit, N. P. Stanton, president, Wm. Platt, J. P. McGregor, W. E. Smith, and A. C. Gunnison.

[Extract.]

On motion, the proceedings of the following meetings were read and approved:

La Farge House, Nov. 12, 1858, approved by the vote of the chair.

La Farge House, Nov. 13, 1858, approved by the vote of the chair. McGregor and Smith voting in the negative.

La Farge House, Nov. 15, 1858, approved. McGregor voting in the negative.

Office at Albany, Dec. 11, 1858, approved. McGregor and Smith voting in the negative.

Office at Albany, Dec. 13, 1858, approved. McGregor and Smith voting in the negative.

Office at New York, Dec. 17, 1858, approved.

Office at New York, Dec. 27, 1858, approved.

Office at New York, Dec. 29, 1858, approved. McGregor and Smith voting in the negative.

Office in Albany, Jan. 5, 1859, approved.

Office in Albany, Jan. 13, 1859, approved.

St. Nicholas Hotel, N. Y., Jan. 7th, 1859, approved.

A.

Whereas the board of directors of the La Crosse and Milwaukee Railroad Company, on the sixth day of January, 1859, adopted a resolution, of which the following is a copy:

Resolved, That the president of this company be, and he is hereby, authorized and directed to assign to Stoddard Judd, of Fox
490 Lake, Wisconsin, in trust for the uses and purposes hereinafter mentioned, third mortgage bonds to the amount of five hundred and fifty thousand dollars, being part of six hundred thousand dollars of said third mortgage bonds heretofore, by resolution of this board passed October 23d, 1858, directed to be set apart to provide for the farm mortgage bonds and relieve the mortgage stockholders—

1st. That said Stoddard Judd, trustee, to deliver to any farm mortgage stockholder third mortgage bonds in amount equal to one-half of the amount of mortgage stock held by such stockholder, on surrender by him of the obligation or contract held by him binding this company to pay the interest on his mortgage and note, and to make a dividend of ten per cent. on such stock, the said trustee to cancel and surrender to this company the stock and obligation of this company so surrendered by the stockholders.

2d. To cancel and return to William Barnes, of Albany, the trustee named in the trust deed securing said third mortgage bonds, or his successor in said trust, all of the said five hundred and fifty thousand dollars of third mortgage bonds so assigned to said Stoddard Judd in trust, that shall not be used for the above first mentioned purposes by the 1st day of May, 1859. And it shall be the duty of said Stoddard Judd to give reasonable notice to all farm mortgage stockholders of this trust and the terms thereof, and to use all reasonable endeavors to enable all farm mortgage stockholders to avail themselves of the provisions for their relief and benefit intended to be made by this resolution, and the assignment to be made by virtue hereof; and this trust to be executed only in case such farm mortgage stockholders shall avail themselves of the same on or before the 1st day of May next:

Now, therefore, this indenture, made the fourth day of February, 1859, by and between the La Crosse and Milwaukee Railroad Company, a corporation created by and under the laws of Wisconsin, party of the first part, and Stoddard Judd, esq., of Fox Lake, in the State of Wisconsin, party of the second part, witnesseth: That the said party of the first part, in consideration of the premises and one dollar to it in hand paid, does hereby sell, assign, transfer, and convey to said party of the second part third mortgage sinking fund bonds of said company to the amount of five hundred and fifty thousand dollars ($550,000) in trust for the uses and purposes hereinafter mentioned.

First. The said Stoddard Judd, trustee, is to deliver to a farm mortgage stockholder third mortgage bonds in amount equal to one-half of the mortgage stock held by such stockholder, on surrender by him of the obligation or contract held by him binding the
491 company to pay the interest on his mortgage and note, and to make a dividend of ten per cent. on such stock, the said trustee to cancel and to surrender to this company the stock and obligations of this company so surrendered by the stockholders.

Second. To cancel and return to William Barnes, of Albany, the trustee named in the trust deed securing said third mortgage bonds, or his successor in trust, all of the said five hundred and fifty thousand dollars of third mortgage bonds so assigned to said Stoddard Judd in trust that shall not be used for the above first mentioned purpose by the first day of May, 1859; and it shall be the duty of said Stoddard Judd to give reasonable notice to all farm mortgage stockholders of this trust and terms thereof, and to use all reasonable endeavors to enable all farm mortgage stockholders to avail themselves

of the provisions for their relief and benefit intended to be made by this resolution, and the assignment to be made by virtue hereof; and this trust to be executed only in case of such farm mortgage stockholders shall avail themselves of the same on or before the 1st day of May next. The said party of the second part hereby accepts this trust, and promises to faithfully and diligently perform the same.

In witness whereof, the said railroad company has hereto affixed its corporate seal, and caused the same to be subscribed by its president; and the said Stoddard Judd, party of the second part, has subscribed his name and affixed his seal.

[SEAL.] La Crosse and Milwaukee R. R. Co., by—
N. P. STANTON, *President.*

[SEAL.] STODDARD JUDD.

B.

Whereas the board of directors of the La Crosse and Milwaukee Railroad Company, on the 16th day of July, A. D. 1858, adopted a resolution, of which the following is a copy:

On motion, *Resolved*, That there be, and is hereby, set apart and appropriated five hundred thousand dollars ($500,000) of the third mortgage bonds of this company, to be used solely (if so many shall be necessary) in retiring the farm mortgage bonds, so called, or in securing the performance of the covenants of this company with the farm mortgage stockholders; and that the above amount, to wit, five hundred thousand dollars of said third mortgage bonds, be placed in the hands of the committee for funding the floating debt, by the president, to be used solely for the above purpose.

And whereas also the said board of directors, on the 6th day of January, 1859, adopted a resolution, of which the following is a copy:

492 *Resolved*, That the president of this company be and he is hereby authorized and directed to assign to Stoddard Judd, of Fox Lake, Wisconsin, in trust for the uses and purposes hereinafter mentioned, third mortgage bonds to the amount of five hundred and fifty thousand dollars, being part of six hundred thousand dollars of said third mortgage bonds heretofore, by resolution of this board passed October 23, 1858, directed to be set apart to provide for the farm mortgage bonds and relieve the mortgage stockholders.

1st. The said Stoddard Judd, trustee, to deliver to the farm mortgage stockholder third mortgage bonds in amount equal to one-half of the amount of the mortgage stock held by such stockholder, on surrender by him of the obligation or contract held by him binding this company to pay the interest on his mortgage and note, and to make a dividend of ten per cent. on such stock; the said trustee to cancel and surrender to this company the stock and obligations of this company so surrendered by the stockholders.

2d. To cancel and return to William Barnes, of Albany, the trustee named in the trust deed securing said third mortgage bonds, or his successor in said trust, all of the said five hundred and fifty thousand dollars of third mortgage bonds so assigned to said Stoddard

Judd, in trust, that shall not be used for the above first-mentioned purpose by the first day of May, 1859.

And it shall be the duty of said Stoddard Judd to give reasonable notice to all farm mortgage stockholders of this trust, and the terms thereof, and to use all reasonable endeavors to enable all farm mortgage stockholders to avail themselves of the provision for their relief and benefit intended to be made by this resolution and the assignment to be made by virtue hereof, and this trust to be executed only in case of such farm mortgage stockholders shall avail themselves of the same on or before the first day of May next.

And whereas also the said five hundred and fifty thousand dollars of third mortgage bonds of said company have been duly assigned to said Stoddard Judd in accordance with said last above-recited resolution;

And whereas also the said board of directors, on or about the 8th day of March, 1859, adopted a resolution by which the said farm mortgage stockholders were allowed to avail themselves of the benefits of said trust on or before the 1st day of May, 1860:

Now, therefore, this indenture, made the 12th day of May, 1859, by and between the La Crosse and Milwaukee Railroad Company, a corporation created by and under the laws of the State of Wisconsin, and Stoddard Judd, of Fox Lake, in the State of Wisconsin, witnesseth: That the said La Crosse and Milwaukee Railroad Com-
493 pany, for value received, in consideration of the premises, and of one dollar to it in hand paid, the receipt of which is hereby confessed and acknowledged, does hereby sell, assign, and transfer the said five hundred and fifty thousand dollars of third mortgage bonds to said Stoddard Judd, and ratify, approve, and confirm the said assignment thereof already executed to him in trust for the uses and purposes specified in said resolution of January 6th, 1859, with the modification expressed in the said resolution passed by said board on or about the 8th day of March, 1859, that the time within which the said farm mortgage stockholders shall be allowed to receive said bonds, or the stock in a new organization, is hereby extended to the 1st day of May, 1860, in accordance with the said resolution of March 8th, 1859.

It is hereby further stipulated and agreed by said Stoddard Judd that in case of a sale by virtue of or on foreclosure of the trust deed or mortgage, or supplement, by which said mortgage bonds are secured, and the organization of a company on such sale or foreclosure, said Stoddard Judd shall surrender all of the said third mortgage bonds remaining in his hands undelivered at the time of such sale, and receive in lieu thereof any equal and proportionate amount of stock in the said company which may be organized on such sale or foreclosure, which stock shall be held by said Judd on the same terms and conditions and for the same uses and purposes as he now holds or has held said third mortgage bonds, and such stock shall be delivered to said farm mortgage stockholders by said Stoddard Judd to the amount of fifty per cent. of the mortgage stock held by such stockholder on surrender by him of the obligation or contract held by him

binding the said La Crosse company to pay the interest on his mortgage and note, and to make a dividend of ten per cent. on such stock as stipulated in said resolutions of January 6th, 1859, provided such surrender is made and said farm mortgage stockholders avail themselves of the benefit of this trust on or before, but not after, the 1st of May, 1860.

In witness whereof, the said railroad company has hereto affixed its corporate seal and caused the same to be subscribed by its president; and the said Stoddard Judd, party of the second part, has subscribed his name and affixed his seal.

La Crosse and Milwaukee Railroad Company, by—

(Signed) N. P. STANTON, *President.* [SEAL.]

STODDARD JUDD. [SEAL.]

494 Circuit court of the United States in and for the district of Wisconsin.

FREDERIC P. JAMES *et als.*
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company *et als.*

It is stipulated by and between the parties to the above-entitled cause that the following are facts which may be used on the trial of this cause with the same force and effect as if duly proven, subject to all objections which may be taken to the relevancy or materiality of the same as testimony:

First. That on the 1st day of July, 1857, the La Crosse and Milwaukee Railroad Company executed and delivered to Edwin C. Litchfield its promissory note for $25,000, and that afterwards the said Litchfield brought suit upon said note in the district court of the United States for the district of Wisconsin, and recovered judgment upon said note at the time and for the amount alleged in the complainants' said bill of complaint; that execution duly issued upon such judgment at the time and in the manner, and was delivered to the marshal, and was returned by the said marshal at the time and in the manner and with the return thereon indorsed, as is alleged in said bill.

Second. That on the 5th day of October, 1857, the said La Crosse and Milwaukee railroad, being indebted to the said Nathaniel S. Bouton, did, on that day, execute and deliver to said Bouton its promissory notes, bearing date on that day, and that afterwards said Bouton brought suit upon said notes in the district court of the United States for the district of Wisconsin upon said notes, and recovered in the said court a judgment, at the time and in the manner and for the amount due upon the said notes, and being the amount as alleged in said complainants' bill as the same is alleged; that the same was duly docketed, and that execution was issued thereupon at the time and in the manner and delivered to the marshal of the district of Wisconsin, and by said marshal returned as alleged in complainants' said bill, and

that said Bouton duly assigned said judgment to the said com-
495 plainants.

Third. That on the 10th day of August, 1857, the La Crosse and Milwaukee Railroad Company was indebted to Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, and J. Howard Mitchell for goods sold and delivered by them to said company, and that afterwards, to wit, on the 21st day of September, 1858, the said parties recovered a judgment at the time, place, and in the manner and for the amount of the said judgment; that the same was duly docketed and execution issued thereon, and the same was returned with the return indorsed thereon as alleged in said bill.

Fourth. That said La Crosse and Milwaukee Railroad Company was, on the 3d day of November, 1854, indebted to the complainant, E. Bradford Greenleaf, and that being so indebted the said Greenleaf commenced suit the county court of Milwaukee county against said railroad company, and afterwards, to wit, on the 10th day of September, 1858, recovered a judgment upon said indebtedness in said court for the amount alleged in said bill, and that said judgment was duly docketed and execution duly issued thereon and returned as alleged in said bill of said complainants.

The object and purpose of this stipulation is to save the expense of procuring copies of the said record and of taking the depositions of said Judd.

FINCHES, LYNDE & MILLER,
Sol's for Compl'ts.
M. H. CARPENTER,
Sol. for Def't, Mil. and Min. R. R. Co.

496 Circuit court of the United States for the district of Wisconsin, in equity.

FREDERICK P. JAMES *et al.*
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD Company *et al.*

It is stipulated that on the hearing of this cause it shall be taken to be a fact proven that the said William Barnes was requested in writing, on the 11th day of February, A. D. 1859, *by the holders of over one hundred thousand dollars in amount of said third mortgage bonds so called*, secured by said Barnes mortgage, to foreclose said mortgage by written request, which is already stipulated in as evidence in this cause; that Russell Sage held $80,000 of said bonds, Alexander Mitchell $6,000, William E. Cramer $7,500, Cyrus Hanley $7,400, Cyrus Hanley, executor, $3,000, Nazro & Co. $3,000, Ludington & Co. $1,300, Wm. P. Lynde, administrator, $16,000, E. Cramer $5,500, John Cramer $1,000, Joseph Cary $1,200, Caswell & Gaylord $2,000, A. B. Van Cott $1,000, Charles Schley $8,000, and John S. Rockwell $22,000; that these bonds were taken at par

in payment of pre-existing debts of the La Crosse and Milwaukee Railroad Company.

FINCHES, LYNDE & MILLER,
Sol'rs for Compl'ts.
MATT. H. CARPENTER,
Sol. for s'd Def'ts.

Indorsed: "Filed May 30, 1865."

497 UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the circuit court of the United States of America for the ninth circuit and district of Wisconsin, begun and held according to law, on the second Monday of April, A. D. 1865, at the city of Milwaukee in said district of Wisconsin, present and presiding, Hon. Samuel F. Miller, associate justice of the Supreme Court of the U. S., assigned to said circuit, and the Hon. Andrew G. Miller, district judge. One the nineteenth day of the term, to wit, on the seventeenth day of July, A. D. 1865, the following proceedings were had, to wit:

FREDERICK P. JAMES, ABRAM M. BREWER, E. Bradford Greenleaf, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, and J. Howard Mitchell
vs.
MILWAUKEE AND MINNESOTA RAILROAD COMPANY, the La Crosse and Milwaukee Railroad Company, and Selah Chamberlain.
} In equity.

This day came the parties, by *by* their counsel, and this cause came on to be finally heard upon the pleadings and proofs, and was argued by counsel; whereupon it is ordered, adjudged, and decreed by the court that the bill be and the same is dismissed at the costs of the complainants to be taxed.

A. G. MILLER.

Indorsed: "Signed and enrolled July 17th, 1865.
JAMES McFARLIN, *Deputy Clerk.*"

498 Supreme Court of the United States.

Know all men by these presents, that we, Daniel Wells, jr., and David Ferguson, of the city and county of Milwaukee and State of Wisconsin, are held and firmly bound unto the Milwaukee and Minnesota Railroad Company in the sum of five hundred dollars, to be paid to the said the Milwaukee and Minnesota Railroad Company or its successors, to which payment well and truly to be made we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 26th day of July, A. D. 1865.

Whereas F. P. James, Abram M. Brewer, E. Bradford Greenleaf, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, and

J. Howard Mitchell have appealed to the Supreme Court of the United States from a decree of the circuit court of the United States for the district of Wisconsin bearing date the seventeenth day of July, A. D. 1865, in a cause in which the said F. P. James, Abram M. Brewer, E. Bradford Greenleaf, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, and J. Howard Mitchell were complainants, and the Milwaukee and Minnesota Railroad Company, the La Crosse and Milwaukee Railroad Company, and Selah Chamberlain were defendants, now, therefore, the condition of the obligation is such that if the abovenamed appellants, F. P. James, Abram M. Brewer, E. Bradford Greenleaf, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, and J. Howard Mitchell, shall prosecute their said appeal to effect, and pay all such costs and expenses as shall be awarded against them as such appellants therein, then this obligation to be void; otherwise, to remain in full force and virtue.

DANIEL WELLS, JR. [SEAL.]
D. FERGUSON. [SEAL.]

Sealed and delivered in presence of—

Indorsed: "Filed and approved in open court Sept. 20, 1865."

Record filed in Supreme Court November 22, 1865.

1. M & M. A R Co after recognized [illegible] valid corporation
2. If bill sustained new litigation arises, indefinitely congenital rottenness

Supreme Court of the United States.

No. 55,

DECEMBER TERM, 1867.

F. P. JAMES, et al.,

vs.

MILWAUKEE AND MINNESOTA RAILROAD COMPANY, et al.

SUPPLEMENT TO

Brief for the Milwaukee and Minnesota Company.

C. CUSHING.

Mr. Stark If sale set aside, mortgage good for benefit of Coma fide bondholders

J. Howard Mitchell have appealed to the Supreme Court of the United States from a decree of the circuit court of the United States for the district of Wisconsin bearing date the seventeenth day of July, A. D. 1865, in a cause in which the said F. P. James, Abram M. Brewer, E. Bradford Greenleaf, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, and J. Howard Mitchell were complainants, and the Milwaukee and Minnesota Railroad Company, the La Crosse and Milwaukee Railroad Company, and Selah Chamberlain were defendants, now, therefore, the condition of the obligation is such that if the abovenamed appellants, F. P. James, Abram M. Brewer, E. Bradford Greenleaf, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, and J. Howard Mitchell, shall prosecute their said appeal to effect, and pay all such costs and expenses as shall be awarded against them as such appellants therein, then this obligation to be void; otherwise, to remain in full force and virtue.

DANIEL WELLS, JR. [SEAL.]
D. FERGUSON. [SEAL.]

Sealed and delivered in presence of—

Indorsed: "Filed and approved in open court Sept. 20, 1865."

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Supreme Court of the United States.

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vs.

MILWAUKEE AND MINNESOTA RAILROAD COMPANY, et al.

SUPPLEMENT TO

Brief for the Milwaukee and Minnesota Company.

C. CUSHING.

Mr. Stark If sale set aside, mortgage good for benefit of bona fide bondholders

UNITED STATES CIRCUIT COURT.

FREDERICK P. JAMES, et als.

vs.

THE MILWAUKEE & MINNESOTA R. R. CO., LA CROSSE & MILWAUKEE R. R. CO. and SELAH CHAMBERLAIN.

Abstract of Bill.

I. Recovery of judgment, Litchfield vs. the La Crosse Company, Oct. 5, 1858, for $26,353.51. Issue and return of execution unsatisfied. Assigned May 3, 1859, to Russell Sage, and assigned by Sage to James and Brewer, April 14, 1863.

II. Recovery by Bouton vs. La Crosse Co. judgment in District Court, April 5, 1859, $7,937.27. Issue and return of execution. Assigned October 28, 1862, to James and Brewer.

Abstract of Answer of Milwaukee and Minnesota R. R. Company.

I. Recovery of judgment admitted, that it equitably belongs to this defendant, and complainant has no interest in or title to said judgment.

II. Admitted by answer and written stipulations filed, —all but the assignment.

III. Recovery by Justice, Cobb, Bean, Wilson, and Mitchell, vs. La Crosse Co., judgment in district court, Sept. 21, 1858, $235.33. Issue and return of execution.

III. Admitted by answer and stipulation.

IV. Recovery judged Sept. 10, 1858, by Greenleaf vs. La Crosse Co. judgment $840.06, *in county court* Milwaukee County. Issued and return of execution.

IV. Admitted by answer and stipulation.

V. That before the indebtedness represented by these judgments was contracted, the La Crosse Company was a corporation authorized to contract them; and authorized to and had acquired and been the owner of the La Crosse Railroad from Milwaukee to La Crosse, with equipments, franchises, &c., of great value.

V. Admitted.

VI. That the La Crosse Company made a mortgage to Palmer, under which bonds are outstanding to $875,000, with interest thereon from Nov. 1, 1862.

VI. Admitted. Mortgage in evidence by stipulation.

1. Mortgage to city of Milwaukee under which their is now due $314,000, and

Admitted. Mortgage in evidence by stipulation.

2. Mortgage to Bronson, Soutter, and Knapp, under which were issued $4,000,000. But district court on foreclosure found only $3,690,600.84 due, with interest from January 13, 1862.	Admitted. Mortgage in evidence by stipulation.
3. Mortgage to Bronson and Soutter on eastern division $1,000,000.	Admitted. Mortgage in evidence by stipulation.
4. Mortgage to Helfenstein, bonds issued to the amount of $364,000.	Admitted. Mortgage in evidence by stipulation.
VII. June 1, 1858, La Crosse Company greatly indebted and embarrassed; large floating debt unsecured; great number persons along line of road had contributed to build the road, and mortgaged their farms, holding contracts of the company to pay interest thereon; large amount of this interest unpaid and more accruing. Company owed then about $10,000,000, besides farm mortgage debt $1,110,000; that Chamberlain was in possession under a lease.	VII. Admits mortgages and Chamberlain lease and his possession; but says his lease was given to defraud creditors. That the district court in the Cleveland case has set aside the lease, as to all persons and parties. The lease and Cleveland record, decree, &c., in evidence by stipulation. That Chamberlain is not a lien creditor of the La Crosse Company, and is improperly joined as a party in this suit.
VIII. The directors of the La Crosse Company, June 1, 1858, authorized an issue of bonds to the amount of $2,-	VIII. Admits the making of the mortgages to Barnes; denies that it was done with any fraudulent intent.

000,000, to be secured by mortgage upon the entire road, including real and personal property, payable in thirty years, with interest at 7 per cent. from July 1, 1858, payable semi-annually; mortgage to be executed to Gould, trustee. June 15, 1858, resolution was amended so as to make Barnes the trustee instead of Gould, and bonds so changed as to make first payment of interest fall due January 1, 1859, instead of July 1, 1859, as by the first resolution.

1. That the mortgage was executed to Barnes June 21, 1858, of $2,000,000. That August 11, 1858, Company executed a supplementary mortgage to Barnes.

That this mortgage and supplement were "issued in "fraud of the creditors and "stockholders of said com- "pany and without au- "thority of law." Not to secure any amount borrowed or owing by said company, but "for the purpose, and "with the design of bring- "ing about a speedy sale of "said road and its franchises, "and cutting off the stock- "holders in said company," and passing the title of road and franchises to some of the directors and their friends.

2. That June 15, 1858, five of the directors, at a meeting in Albany, N. Y. by

The mortgages to Barnes are both in evidence by stipulation.

The foreclosure of the mortgages by advertisement May 21, 1859, the purchase of the property by Barnes in pursuance of law, and the organization by him of the defendant, the Milwaukee & Minnesota Railroad Company, are all set out in the answer.

The record of the advertisement and the organization of the Milwaukee & Minnesota Railroad Company are all in evidenee by stipulation.

The testimony by stipulation shows that the resolution of the board, at Albany, N. Y., changing the time the interest should fall due on the bonds, was subsequently ratified by a meeting in Wisconsin.

Stipulation returned with Judd's deposition.

Denied.

resolution, directed modification of the bonds to be issued under said Barnes' mortgages, so as to change the time of first installment of interest as above stated, that they might more speedily carry out their fraudulent design of selling the road.

3. That at the same meeting, Guest, Gunnison and Noxon, three directors, were appointed committee to settle claims against the company, with power to do all that the board could do in that behalf, and to sell or negotiate in payment any of the Barnes bonds, "at such rates and in "such quantities as to them "should seem proper and for "the best interest of the "company."

Admitted.

4. That said committee soon after settled with Chamberlain a claim he had against the company and gave him the company's note for $20,000, and agreed to deposit with him $400,000 of said bonds as collateral; and did then deposit $200,000 of said bonds, and paid him $5,000 in cash raised by hypothecation or pretended sale of $100,000 of said bonds. That in October or November, the committee pretended to deliver to Chamberlain the other $200,000 of said bonds as collateral.

Admitted.

IX. That about January 10, 1859, said bonds were divided up between said committee and their friends without being sold at public sale, as follows:

To Gunnison ...	$75,000
Platt	100,000
Guest	50,000
Luther	50,000
Noxon	75,000
Gilbert	50,000

That said bonds were not all taken directly in their names, but in the names of their accomplices.

IX. Denied.

Answer says, Chamberlain was fully authorized to sell said bonds at maturity of the note, unless paid. That the company was unable to raise the money to pay the note, and Chamberlain proceeded to a sale of the bonds; and that in November, 1858, Chamberlain sold the bonds as he was authorized to do, in due course of business to *bona fide* purchasers. That the sale was open, fair and honest, and the bonds were sold for the highest price that could be obtained.

X. That the directors at said meeting at Albany, held December 13, 1858, "in further execution of said illegal and fraudulent design," after reciting that they had received information from Milwaukee that a large amount of valuable property, which had cost $150,000 was in peril of being lost, in consequence of the non-payment of $10,000 due as purchase money; that the company had no means, and the property was indispensible, &c., passed resolutions directing the president to borrow not exceeding $15,000, and sell or pledge any bonds or securities belonging to the company to raise that amount, upon the best terms he should be able.

X. Answer admits the meeting passed this resolution, but that the recital to the resolution were all true and made in good faith, and that the resolution was subsequently ratified by a meeting of the board in Wisconsin.

1. The president borrowed of Wm. Gould, in Dec., 1858, $2,500.	Admits the borrowing of the sum of $15,500 as stated in the bill of Gould, Watson, Gilbert and Foster.
2. Of Wm. Watson, $2,500,	
3. Of Seth R. Foster, $3,000,	
4. Of H. G. Gilbert, $7,500,	
That for each of these sums he gave the note of the company, and deposited as collateral Barnes' bonds at the rate of 5 per cent. on the dollar. Making borrowed. $15,500. Collateral..... $310,000.	Admitted.
5. That the notes were given and the security pledged "with the understanding be- "tween the said directors and "the said Watson, Gould, "Gilbert and Foster, that "said notes would not be "paid," nor the said securities be in any manner redeemed by said railroad company.	Denied.
6. That it was not true that said property was in danger of being lost, and so the directors well knew at said meeting; the claims on the property having been arranged by McGregor and Smith, two of the directors. Bill sets out what arrangements they had made.	Denied.
7. That the president, N. P. Stanton, in Dec., 1858, did visit Milwaukee to pay off the said incumbrances, but was informed of the arrange-	Admitted, that the president visited Milwaukee and paid part of the incumbrances. The balance of this allegation denied.

ment made by McGregor and Smith, and was urged by them to return with the money and take up the notes and thus save the bonds deposited as collateral thereto, but the president refused and insisted upon paying a portion of the money on the incumbrances, "for the fraudulent purpose "of preventing the payment "of said notes and the re- "demption of said bonds; "that he paid between five "and six thousand dollars "upon one of said incum- "brances, and insisted upon "paying to Chamberlain the "amount he had advanced "to take up another incum- "brance;" that the president only paid one-half of the incumbrance on which he made the payment, not enough to protect the property, and was not intended to protect it; and in the other case, proceedings had been stayed by the action of said Chamberlain.

8. That the company had means enough to save said property; the borrowing of money was therefore unnecessary; that Stanton, when in Milwaukee, had money enough belonging to the company to have paid the incumbrances and saved the property, without using the money borrowed, and was requested so to do, but refused.

Denied.

9. That the directors and the holders of said bonds combined together to defraud, &c., by borrowing said money and depositing said bonds as collateral, to have them sold, &c.	Denied.
10. That Stanton never pretended to apply more than $7,500 of said money to the purpose for which it was borrowed; but that he and the directors appropriated the balance to their own use.	Denied.
11. That Watson, Gould, Gilbert and Foster, in pursuance of said fraudulent scheme, were induced by the directors, in 1859, "without "even offering said bonds at "public or private sale, in "any manner whatever, to "divide said bonds among "themselves and others, their "confederates," Gould taking $50,000 for his $2,500; Watson taking $50,000 for his $2,500. Gilbert delivered $75,000 to one Kennedy, an agent of Noxon, for $3,750, and $50,000 to one Lovitt for $2,500, and $15,000 to J. M. Gilbert for $750, and $5,000 to one Templeton for $250. Foster took $60,000 for his note of $3,000.	Denied. At maturity of notes the company was unable to pay the notes, and the bonds were sold, *bona fide*, in due course of business, for the best price that could be obtained.
12. That at the time these bonds were so divided up, the company had means enough to have paid the notes and redeemed the bonds.	Denied.

XI. That Noxon and Guest disposed of other of the bonds to their friends and confederates, without consideration, or at 5 cents on the dollar, "in pursuance of their fraud-"ulent conspiracy."

XI. Denied.

XII. That only $200,000 of said Barnes bonds were *bona fide* disposed of by the company; the balance were fraudulently issued and disposed of by the company.

XII. Denied. All the bonds were sold and negotiated except about $550,000 held by Judd.

As to these bonds see Judd's deposition.

XIII. The company, "in pursuance of said fraudulent scheme," made no provision to pay the interest on said Barnes bonds, which fell due January 1, 1859, "and the "said Barnes, as trustee on "or about the 1st of February, "1859, commenced the fore-"closure of said mortgage by "advertisement, *and having* "*previously given the* notice "required by law in that be-"half, on the 21st day of May, "1859, sold at public auction, "at the Court House in the "city and county of Milwau-"kee, in the State of Wis-"consin, all the property, "rights, privileges, franch-"ises, things in action, and "other things in said mort-"gage, and supplementary

XIII. The answer sets out in detail the foreclosure of the Barnes mortgage, and the organization of the Milwaukee & Minnesota Railroad Company; denies that it was in pursuance of any fraudulent scheme; was foreclosed in good faith because the company was unable to raise the money.

The proceedings to foreclose this mortgage, and the articles of organization are in evidence by stipulation.

"mortgage, to him, said "Barnes, described. And "the said Barnes then and "there, at said sale, became "the purchaser thereof for "the sum of one million five "hundred and ninety-three "thousand dollars and thir- "ty-three cents, payable in "said bonds, and as trustee "for said bondholders, no "other person or body hav- "ing made any bid whatever "for the same. That im- "mediately thereafter, to "wit: on the 23d day of "May, 1859, the said bond- "holders proceeded to or- "ganize a new corporation, "under and by virtue of the "laws of the State of Wis- "consin, and took the name "of the Milwaukee and Min- "nesota Railroad Company, "and the said Barnes then "and there conveyed to said "last named company, all "the property and things by "him purchased as aforesaid, "and the said company now "claims to be the owner of "the said property, in fraud "of the rights of your orator "and the stockholders and "creditors of said La Crosse "& Milwaukee Railroad Com- "pany."

XIV. That the Barnes bonds and the stock of the Milwaukee & Minnesota Company have never had any market value.

XV. The Milwaukee and Minnesota Company has never had possession of any part of the road, which has been held adversely to said company, but the company has confederated with the trustees of the second mortgage on the eastern division, with a view to obtain possession, and the company now threatens to take possession, "under said "fraudulent and corrupt or- "ganization, and appropriate "said property and franchises "to its own use."

XV. Admits; never had possession; expects and intends to pay the amount of interest due, and enter into possession of the eastern division.

XVI. That Barnes "was "fully advised of the fraudu- "lent issue of said bonds, and "was confederating with the "said directors for the sale "of said road, and that the "bonds for the payment of "which said road was sold "were, a large majority of "them, illegally issued and "held by the directors of the "old company and their im- "mediate friends, on a mere "nominal consideration, and "were fraudulent and void."

That in pursuance of the scheme, the road was sold for the par value of said bonds and interest and costs of sale, to prevent the stockholders from redeeming, and to defraud the creditors.

Denied.

XVII. That Barnes was paid $50,000 of the bonds for executing the trust, and counsel were retained and paid in the same manner.

XVII. No information or belief.

XVIII. That at the time of the foreclosure, a large amount of the bonds had not been issued; and have been fraudulently negotiated by the directors since the sale.

XVIII. Denied.

XIX. That on the 6th of July, 1860, the district court, on motion of Bronson and Soutter, appointed receiver from Milwaukee to La Crosse. Receiver is still in possession.

That the premises are worth much more than the mortgages, exclusive of the Barnes mortgage.

That the income of the road has been about $2,724,291.28 in gross, to January 1, 1863; since in receivers hands. Of this more than half is net.

That notwithstanding this the receiver fails to pay the interest on said mortgages, except said eastern division mortgage to Palmer; interest accumulating, &c. If receivership continue, will eat up the property, &c.

XIX. Admitted.

XX. That the La Crosse Company has ceased to exist since the Barnes foreclosure.

XX. Admitted.

Prayer for Relief.

That the property sold by Barnes May 21, 1859, may be sold subject—

1. To the Palmer mortgage.
2. To the Milwaukee city mortgages.
3. To the Land Grant mortgage.
4. To the Bronson and Soutter mortgage on eastern division.
5. To the Helfenstein mortgage.

That the avails of sale may be brought into court to be divided between complainants and other claimants.

To this end, the bill prays that the sale under the Barnes mortgage may be decreed to be fraudulent and void, and the Minnesota Company be decreed to take nothing under said sale, and to be enjoined from taking possession, or exercising any control over the road or its franchises.

That a Receiver may be appointed.

That an injunction may be issued.

XXI. The answer insists that Barnes is a necessary party.

XXII. The answer insists that the bill is designed to perform the office of a *quo warranto;* and claims the same benefit of this objection that it would have had by demurrer.

BRIEF FOR DEFENCE.

I.

The object of this bill is to procure a sale of a railroad from Milwaukee to La Crosse, worth millions of dollars, to satisfy judgments amounting in the aggregate to $35,366.27; and to have such sale made subject to five prior incumbrances *of unascertained amounts*. Those incumbrances are not before the court, and therefore the amount of their prior valid liens cannot be determined in this suit.

A better scheme was never devised by a band of conspirators to ruin and oppress.

If the prayer of this bill be granted, *the interest* of one party, *not the property*, will be sold. Whether that interest is worth something or nothing can not be known until the end of other litigation not yet commenced. This is selling a litigation, a speculation, and not property, the nature, extent and title to which the court has first ascertained.

Caldwell vs. Taggart, 4 Pet. 190–202.

II.

Barnes is a necessary party, without whose presence the court cannot render the decree sought in this case, and this bill for that reason must be dismissed.

If this decree were granted, the Barnes mortgage under which Barnes claims to have performed his duty and executed his trust by foreclosure and sale, would be reinstated as a valid mortgage, and the duty be cast upon him to proceed to its foreclosure for the benefit of every valid bond secured by it, which this bill states amounts to $200,000. Barnes is charged in the bill as a party to the fraud complained of, and the title conveyed by him is sought to be invalidated for fraud to which it is alleged he was a party. He is therefore a necessary party to this bill.

It is well settled as a rule of the federal courts, as well as all others, that every person whose interests are to be affected,

or whose relations and duties are to be changed, by the decree sought, must be made a party to the bill, and where such person cannot be made a party, *no decree can be rendered.*

Shields vs. Barrows, 17 How. 130.
Field vs. Holland, 6 Cranch, 24.

In Russell vs. Clark's Exr., 7 *Cranch*, 69, it was held that assignees in bankruptcy are indispensable parties to a bill, against the bankrupt and certain persons to whom he conveyed property in trust before he was decreed a bankrupt.

This case is strongly in point. If the decree had been granted, then the assignee would have been entitled to claim it as a part of the assets belonging to him, and contest the claim of the complainants; and for this reason he was a necessary party, and the court refused a decree upon that ground.

In Coiron vs. Millaudon, 19 *How.* 114, it was held that where a bill was filed to set aside under a mortgage not only the purchaser, but the mortgagee for whose benefit the sale was made, was a necessary party, having an interest in upholding the sale, and the fact that the mortgagee was out of the jurisdiction and could not be made a party made no difference, *and the bill was dismissed.*

In Smith vs. Trenton, &c. 3 *Green Ch.* 508, it was held that where a decree would affect the duty of the receiver of a corporation and lessen his responsibilities, he was a necessary party.

In Ward vs. Hollins, 14 *Md.* 158, it was held that where a bill was brought to assail or correct a deed, all parties to it were necessary parties to the bill, and without them no decree could be pronounced.

McRea vs. Bank Alabama, 19 How. 376.
Jameson vs. Chestnut, 8 Md. 34.

Calvert on Parties, p. 207. "It appears to be a general "rule that in a suit to establish the interest of cestnis que "trust in real estates, or in a suit to destroy it, the trustee "must be brought before the court. Where real estate is "conveyed to a trustee to one who has no notice of the trust, "*if a bill is brought by the cestnis que trust to recover it, the* "*trustee must be made a defendant. Trustees to a lease must* "*be made parties to a bill to set it aside on the ground of fraud;* "so also obligees in a bond, being trustees in a suit for satis- "faction of the bond debt."

Dormer vs. Fortesque, 3 Atk. 132.
Wood vs. Williams, 4 Mad. 182.
Bromley vs. Holland, 7 Ves. 11, 12.

In Jones vs. Jones, 3 *Atk.* 110, 112, a bill was brought to set aside a lease executed by trustees upon the ground that it was a forgery. There were circumstances of fraud attending the case, in which the trustee was implicated, but this was not made a specific ground for relief in the bill. Lord Hardwich held the bill defective for both reasons as a bill for relief on the ground of fraud, *and that the trustee was a necessary party.*

In Cope vs. Parry, 2 *J. V. Walker* 538, it was held that in a bill brought to compel the execution of an agreement to convey property to a trustee, *the trustee was a necessary party.*

The effect of the decree sought in this case would be to reinvest the trustee with the estate as mortgagee, and cast upon him the duty of executing the trust ; *and he is a necessary party.*

" Where real estate is in the hands of trustees, and the " trustees convey it over without notice of the trust, if a bill " is brought by the *cestnis que trust, the trustees must be made* " *defendants.*"

Harrison vs. Pryne, Bar. 324.
2 Chitty Eq. Dig. 1706, Sec. 6.
Shaver vs. Brainard, 29 Barb. 29.

III.

Between the complainants and the relief they desire *the sale of this property*—there exists the obstacle of the sale on the foreclosure of the Barnes mortgage, *a lien existing before any of the judgments mentioned in the bill were rendered.* The bill therefore prays " *that said sale may be decreed to be fraudulent* " *and void*, and the said Milwaukee & Minnesota Railroad " Company may be decreed to take nothing under the sale," &c. To obtain this result, two things are necessary : (1) The bill must set forth definitely and precisely the facts and circumstances constituting the fraud ; and (2) the proof must sustain, clearly establish, the precise fraud alleged.

"A party is not allowed to state one case in a bill or "answer, and make out a different one by proof; the *alle-* "*gata* and *probata* must agree."

Boone vs. Childs, 10 Pet. 207, 209, 210.
Banks vs. Carnell, 11 Wheat, 181.
James vs. McKernon, 5 J. 543.
Gouveneur vs. Elmesdorf, 6 J. Ch. 81.

The complainants' bill rest only on the theory of fraud, and upon that theory alone can a decree be made.

There might be forty other objections to this foreclosure, but they could not avail the complainants. The decree must be rendered upon the case as made by the bill, or not at all.

The facts and circumstances relied upon as constituting the fraud must be *so specifically stated, that issue can be taken upon them;* and the bill must lay a sufficient foundation for the decree *in conformity with its allegations.* "Railing accu- "sations," and black letter rhetoric, cannot supply the want of *specific allegations of the precise nature* of the fraud relied upon for the relief sought.

Harding vs. Handy, 11 Wheat 103.
Hood vs. Juman, 4 J. 437.

"The charge of fraud must be pointed, and not a general "charge." *Palmer vs. Mure*, 2 *Dick.* 490. "A general "charge of fraud is to be referred to, and explained by *the* "*particular allegations of fraud which the bill contains;* but "if their be no *definite or specific* charge of fraud, a vague "charge—where the facts alleged may or may not amount "to a fraud—will not sustain the bill upon demurrer." *Munday vs. Knight*, 3 *Hare* 497. [25 E. Ch. 496, *note.*] This case was on a demurrer, which the court says, *admits the general fact of fraud.* But because the bill did not specifically show *in what the fraud consisted,* held insufficient.

Moore vs. Green, 19 How. 69, 72.

In Patten vs. Taylor, 7 How. 159, the court say: "Relief "will not be afforded, even on the ground of fraud, unless it "be made a distinct allegation of the bill, *so that it may be* "*put* in issue by the pleadings."

IV.

Turning now to the bill to see what specific facts and circumstances are stated, as the foundation for the general allegation that the sale was fraudulent and void; we find (1) that the interest was due according to the bonds and mortgage; (2) that Barnes gave the notice of the sale required by law; that he became the purchaser at the sale for $1,593,000.33,—(he was authorized to become the purchaser by chap. 10, Laws Wis., 1859;) that he purchased as trustee for the bondholders, "no other person or body having made any "bid whatever for the premises;" that thereupon the bondholders organized the Milwaukee & Minnesota Railroad Company, "under and by virtue of the laws of the State of Wis-"consin;" and said Barnes then conveyed the property to said company, and that said company now claims to be the owner "of said property, *in fraud of the rights of your orator and "the stockholders and creditors*" of the La Crosse Company.

See printed bill, p. 19, 20.
Fol. 63, 64, 65, 66.

These are all the facts and circumstances stated in the bill *in regard to the forclosure of the Barnes mortgage;* and so far from showing the specific facts to which the general allegation of fraud can be referred, the bill absolutely negatives such general allegation, by stating in great detail every fact necessary to make *the foreclosure of the mortgage* and the title of the Minnesota Company perfectly valid.

The bill states, page 20, fol. 69, *on information and belief*, that Barnes was aware of the "fraudulent issue of said bonds," and that he was confederating with the directors to ensure a sale of the road. But when, where and how did Barnes become aware that any of the bonds were fraudulently issued, and what bonds were so issued? When, where and in what manner did Barnes contribute to a sale, or confederate to produce it save that as trustee he made the sale as the bill shows he was bound to do? The bill answers none of these questions. In other words the bill states no specific fact to which the general allegation of fraud can be referred.

The bill also contains a general allegation that a great number of these bonds had not been issued, and were not outstanding at the time of the foreclosure, and that the forclosure was *fraudulently* made for the full par value of the bonds—meaning I suppose for all the bonds secured by the mortgage.

This allegation is directly denied by the answer, and so far as any proof has been taken it sustains the answer.

$550,000 of these bonds had been placed in the hands of Stoddard Judd as trustee, for certain purposes. The trust had not expired at the time of the foreclosure—see deposition of Judd. These bonds were legally held by him, and were outstanding, so far as the old company was concerned.

But even if this allegation of the bill were shown to be true, this fact would in no way affect the foreclosure, unless the trustee knowingly, and for some fraudulent purpose, pretended to foreclose for more than was due, or for more bonds than were outstanding. A mere mistake of the trustee in this behalf would not invalidate the foreclosure.

Klock vs. Conkhite, 1 Hill 110.

This bill is therefore *demurrable*, within the principle of the above cited cases, as a bill to set aside *the foreclosure of the Barnes mortgage*. But every allegation of the bill in this behalf, (vague, insufficient and worthless as they all are,) is directly and positively denied by the answer. This answer of the corporation, under its seal, being the only form of answer it can interpose, has the same effect as the sworn answer of a natural person defendant, and can only be overcome by the direct testimony of more than one witness, or the testimony of one with corroberating circumstances.

Haight vs. Pro. Morris Aqueduct, 5 Wash. C. C. 601.

Not a word of testimony has been taken by the complainants in support of these allegations; *but on the contrary the testimony taken by the defendant completely negatives and disproves the bill.*

See Dep. Barnes, trustee.
Dep. Stanton, President of the Company.
Dep. E. G. Ryan, who as counsel conducted the foreclosure proceedings.
Dep. of Alexander Mithell.
See testimony of Stoddard Judd as to the bonds held by him.

V.

This bill is to set aside the foreclosure of, and sale under the Barnes mortgage. To obtain this relief, the bill must distinctly state, and the evidence clearly establish, that the *foreclosure itself was fradulent.* And the distinction is not to be lost sight of here, between proof of fraud in the foreclosure proceedings, and proof of a fraudulent issue or disposition of the bonds before, and entirely unconnected with

the foreclosure proceedings. *The fraud complained of must press upon the foreclosure.*

If a bill be brought to set aside the judgment or decree of the court, the allegations and proofs must establish fraud in the obtaining of the judgment or decree. Allegations and proof that the contract on which the judgment or decree was rendered was obtained by fraud—and particularly of some one else than the plaintiff in the judgment or decree—will not set aside the judgment. A party cannot be permitted to lay by until after a judgment or decree has been rendered against him, on a contract to which he had a good defense, and then ask relief in equity *upon grounds that would have been available in the first suit.*

Brown vs. Swann, 10 Pet. 497.
Emerson vs. Udall, 13 Vt. 477.
Lansing vs. Ely, 1 John, Ch. 49.
Smith vs. Lowry, 1 John, Ch. 320.

2. The foreclosure of this mortgage by advertisement has, as against all the complainants, (they not being creditors by lien prior in date to that of the mortgage foreclosed,) the same effect as a sale under foreclosure decree, except they might have redeemed within one year from the sale as provided by law.

R. S. Wis., Ch. 154, sec. 18.
General Laws Wis., 1859, Chap. 10.
Benedict vs. Gilman, 4, page 58.
Klock vs. Conkite, 1 Hill 107.
Demarest vs. Mykoop, 3 John, Ch. 129.
Jackson vs. Colden, 4 Cow. 266.

The advertisement of the premises for sale, gave legal notice to all concerned; and any defence the complainants had to the foreclosure might have been interposed by application to a court of equity to enjoin the sale. The neglect to do so was consent; and having now for four years acquiesed, until innumerable third persons have became interested in the property, they cannot ask a court of equity to set aside the sale upon grounds *which existed, if at all, before the foreclosure was had.*

3. The whole amount of judgments represented by this bill is $35,336.77, of this amount over two-thirds is included in the Litchfield judgmeut, $26,353.51, The testimony shows that Russell Sage was one of those bondholders, who in writing applied to Barnes on the 11th of February, 1859, to foreclose this mortgage; (see stipulation filed in this cause May 16, 1865); the bill states that afterwards on the 3d day of May, 1859, Russell Sage purchased this Litchfield judgment, and thereafter owned it until April 14, 1863, nearly four years after this forclosure was completed. The evidence all shows that Sage, being then, May 21, 1859, the owner of this judgment, was the principal actor in the foreclosure proceedings; signed the articles of the organization of the Milwaukee and Minnesota Railroad Company, as a bond-

holder in his own right, and as attorney for eighteen other bondholders; and that immediately after the foreclosure he was elected President of the Company and so continued for years.

VI.

I am not aware that it is claimed that the power of sale in this mortgage is invalid. If such ground should be taken on the argument, the following cases will put the matter at rest:

Bronson vs. Kinsie, 1 How. 320, 321.
Richards vs. Holmes, 18 How. 143.
Bradley vs. Chester Valley R. R. Co., 36 Penn. 141.
Byron vs. May, 2 Chand. (Wis.) 103.
Walton vs. Cady, 1 Wis. 433.
Bloom vs. Van Renssaleur, 15 Ill. 503.

VII.

Protesting that on this bill to set aside the foreclusure of this mortgage, other and distinct transactions between other parties, totally unconnected with the foreclosure, are immaterial, irrelevant and worthless to the complainants; I come to examine what the bill calls a fraudulent disposition of bonds. The bill admits that $200,000 of the bonds were legally and *bona fide* issued. If so, the foreclosure and sale were valid, and the question as to other bonds becomes a question between the holders of the valid and the holders of the invalid bonds, *none of whom are parties to this suit*, and the *corporation* has no interest in the question.

But passing this point, what does the bill charge as to fraudulent disposition of bonds? But two transactions are specified in the bill, and to these only proof has been taken.

1. Chamberlain had a claim against the Company, and the directors appointed a committee to settle with him and other creditors, with full power, as the bill states (fol. 41, p. 13,) to dispose of any part of these bonds for that purpose, "at such rates and in such quantities as to them "should seem proper and for the best interests of the company." This was at a meeting in New York, but the proof shows that the proceedings

of this meeting were subsequently ratified by the board at a meeting in Wisconsin. (See stipulation attached to Dr. Judd's deposition.) The committee raised and paid Chamberlain, by sale of part of these bonds at five cents on the dollar, $5,000. They gave him the company's note for $20,000 and deposited, as collateral, bonds at the same rate, with power to sell the same *at public or private sale*, if the note was not paid at maturity. When the note matured the Company did not pay it, and Chamberlain directed his brokers, Miegs and Greenleaf, to sell the bonds. They did sell them at five cents on the dollar, all that could be got for them, paid the note and returned it cancelled to the president of the Company. Due notice was given to the Company that the bonds would be sold, but the Company had no means to pay the note, and the sale took place in the ordinary way in such cases. See depositions of Stanton and Chamberlain.

This is the transaction as established by the evidence, and it is submitted that it was entirely legal and honest. That the bonds sold at so low a price was owing to the then financial condition of the company and the doubtful value of the security—a fact that in no way invalidates the sale of the bonds.

See opinion Sup. Ct. in 2d mort. foreclosure case.

The theory of the bill is, that this transaction was fraudulent, because it was had *in pursuance of a fraudulent scheme entertained on the part of the directors to cause a sale of the road;* but it is not alleged that Chamberlain had any notice of such a scheme, either when he took the bonds or disposed of them. *And without such allegation, what is alleged is worthless.* But the answer of the defendant utterly denies that any such scheme existed; not a word of proof has been taken by complainants tending to establish it, and the testimony taken by the defendant clearly disproves it.

See deposition of Stanton.
" deposition by Chamberlain.

The transaction is left then to stand upon its own merits, and is entirely legal.

2. The second transaction, as shown by the testimony, was this:—The round-house property of the Company, which had cost some $150,000, was in danger of being sacrificed and lost for want of a payment of about $15,000, part of the purchase money. The board of directors at a meeting in N. Y., (the proceedings of which were afterwards ratified by a meeting in Wisconsin,) directed the president to borrow the money and proceed to Wisconsin and save the property. Thereupon he borrowed

of Gould	$2,500,
of Watson	2,500,
of Foster	3,000,
of Gilbert	7,500,

and gave the notes of the Company with these bonds as collateral, *at*

the rate of five cents on the dollar. The money was all used by the President, *under the direction of the board of directors,* about the legitimate business of the company and in paying its debts. (See last deposition of Chamberlain.) The notes were not paid, the bonds were sold *at five cents on the dollar to pay the notes.*

To turn this transaction into a fraudulent one, the bill alleges that at the time the loans were made, it was fraudulently agreed that the notes should not be paid, nor the bonds redeemed; and that this was a part of a general fraudulent scheme to have the road sold.

The answer admits the borrowing of the money, the deposit of the bonds as collateral, and their sale at about five cents on the dollar, to pay the notes; *but denies the fraudulent scheme, and denies the fraudulent agreement that the notes should not be paid and the bonds be sold.*

The testimony taken by both parties fully sustains the answer and refutes the bill.

See deposition of Stanton, who borrowed the money.

The deposition of Wm. Gould, } Taken exparte by the
The deposition of Watson, } Complainants.

The bill itself states the borrowing of the money to the amount of $15,500, which it does not pretend has ever been paid except by the sale of the bonds; nor does the bill show any offer by the company, or any of its creditors to redeem the bonds, nor do the complainants in the bill offer to repay the money actually borrowed and used by the company. Another remarkable fact is, that at the foreclosure and organization of the Milwaukee & Minnesota Railroad Company, Russell Sage, who then, as the bill states, owned the Litchfield judgment, represented nearly all these bonds and signed the deed of organization for them, as follows:

L. A. Batterushall—the Gunnison bond	$50,000.
H. G. Gilbert	50,000.
Roscius R. Kennedy	75,000.
Alfred Noxon	17,000.
S. H. Alden	30,000.
Wm. Gould	50,000.
Wm. Watson	56,500.
S. R. Foster	20,000.
	$348,500.

(See deed of organization in evidence.)

MATT. H. CARPENTER,
For Defendant.

Supreme Court of the United States.

No. 55.

DECEMBER TERM, 1867.

F. P. JAMES ET AL.

vs.

MILWAUKEE AND MINNESOTA RAILROAD COMPANY ET AL.

BRIEF OF DEFENDANT, THE MILWAUKEE AND MINNESOTA RAILROAD COMPANY.

I.—Statement of the Pleadings.

The bill in this case is filed by the complainants, as assignees of certain judgments rendered against the La Crosse and Milwaukee Railroad Company, and also as original holders of certain judgments rendered against said company, in their own behalf, and in behalf of all the creditors of the said La Crosse and Milwaukee Railroad Company who shall come in and contribute to the expenses of the suit.

The bill sets forth the judgments and assignments thereof.

It states that the writs of *fieri facias* sued out upon said judgments have been returned *nulla bona*, and that said judgments are still in full force and unsatisfied.

That the La Crosse and Milwaukee Railroad Company was duly incorporated under the laws of the State of Wisconsin, and was seized and possessed of a railroad, and lands, and other valuable property appertaining to the said railroad.

That the various mortgages were given by the La Crosse and Milwaukee Railroad Company.

That about the 1st day of June, 1858, the La Crosse and Milwaukee Railroad Company was greatly embarrassed in its pecuniary affairs; that the amount of debt then existing against said company was near $10,000,000; that at that time Selah

Chamberlain was in possession of said road, under a lease to secure him the amount due him on contracts for the construction of said road.

That the directors of the La Crosse and Milwaukee Railroad Company, on the 1st day of June, 1858, authorized an issue of the bonds of said company to the amount of $2,000,000, to be secured by a mortgage on the road from Milwaukee to La Crosse, including all their real and personal property appertaining to said line of road, payable thirty years from date at seven per cent. interest, the first payment of interest to be made on the 1st day of July, 1859, and the mortgage security for said bonds to be executed to William Gould as trustee. That said resolutions were afterwards, on the 15th day of June, 1858, so amended as to substitute William Barnes as trustee instead of said Gould; and the first payment of interest was made to become due on the 1st day of January, 1859, instead of the 1st of July, 1859, as first determined. That on or about the 21st day of June, 1858, a trust deed was executed in name of the said railroad company to said William Barnes, and bonds to the amount of $2,000,000 were executed, secured by said trust deed. That afterwards, on the 11th day of August, 1858, a supplementary mortgage was executed in name of said company to said Barnes.

The bill charges that both of said trust deeds or mortgages to Barnes were issued in fraud of the creditors and stockholders of said company and without authority of law. That the object of executing said mortgages to Barnes was to bring about a speedy sale of the road, and cut off the stockholders and defraud the creditors. That on the 15th day of June, 1858, the directors of the company made a modification of the bonds to be issued under the Barnes mortgages so as to render the first installment of interest due on the 1st day of January, 1859, instead of the 1st day of July, 1859, which modification the bill charges to have been made with the view of more speedily carrying out the fraudulent design of selling the road. That a committee of the board of directors made a settlement with Selah Chamberlain, and gave him a note for $20,000, and deposited with him $400,000 of the Barnes mortgage bonds as collateral security. That afterwards, about January 10, 1859, said last-mentioned bonds were divided out among certain of the directors of the company and their friends without being sold at public sale. That a portion of said bonds were taken for certain of the directors in the name of third persons, their agents. The bill further charges that the directors borrowed certain sums of money from Watson, Gould, Gilbert, and Foster, and

deposited as collateral security Barnes mortgage bonds to the amount of $310,000, at the rate of five cents on the dollar. That said last-mentioned transaction was a fraudulent device of the directors to procure a sale of the bonds, so that they might be bought up by the directors at a mere nominal consideration, which device was afterwards carried into effect. That only about $200,000 of the said Barnes mortgage bonds were issued to the *bona fide* creditors of the company. All the residue of the $1,500,000, pretended to have been issued by the directors, were fraudulently issued and disposed of by them. That default was made in payment of the interest on the Barnes mortgage bonds, and Barnes, the trustee, sold the road under his mortgages, and became the purchaser thereof, for the sum of $1,593,033, payable in said bonds, as trustee for said bondholders. That immediately after the said sale of the road, to wit, May 23, 1859, a new company was organized, under the name of the Milwaukee and Minnesota Railroad Company, to which company Barnes transferred his purchase.

The bill then prays that the sale under the Barnes mortgage may be declared fraudulent and void, and the road and its appurtenances sold for the benefit of the creditors.

The bill further prays process of subpœna against La Crosse and Milwaukee Railroad Company, The Milwaukee and Minnesota Railroad Company, and Selah Chamberlain.

The answer of the Milwaukee and Minnesota Railroad Company states that the La Crosse and Milwaukee Railroad Company, being largely indebted, with a view of securing said indebtedness, and for other legitimate and necessary purposes, executed the original and supplemental mortgages or deeds of trust to Barnes, and issued the bonds secured by said mortgages. That upon the execution of said mortgages or trust deeds to Barnes, the said company commenced to deliver the bonds secured by said mortgages in payment of the debts of the company, and for the proper business of the company; that all said bonds were transferred by the directors for the benefit of the company; that large numbers of said bonds were delivered to creditors of the company, and that large numbers of said bonds are now held by the said creditors, or have by them been turned into stock of the Milwaukee and Minnesota Railroad Company.

It states the default in the payment of interest, and foreclosure and sale by Barnes, and purchase by him of the road, as trustee for the bondholders, at the price of $1,593,333 33, and organization of the present Milwaukee and Minnesota Railroad Company, and transfer by Barnes of his purchase to

it. That the Milwaukee and Minnesota Railroad Company has since its organization continued, and now is, a corporation, under the laws of the State of Wisconsin, and its incorporation was recognized and approved by act of the Legislature of the said State of Wisconsin, of March 6, 1862, contained in chapter two of the private and local laws of said State.

The defendants aver that they are advised that the judgments described in complainant's bill were not liens or encumbrances on the La Crosse and Milwaukee railroad.

They aver that the said judgments described in the bill were rendered subsequent to the execution of the mortgages or trust deeds to Barnes, and if they ever were liens on the road, their lien was extinguished by the foreclosure and sale under the Barnes mortgages or trust deeds.

They deny all fraud in execution of the Barnes mortgages or trust deeds, and bonds secured by them, and aver that said mortgages or trust deeds were executed *bona fide*, to secure the indebtedness of the company, and to raise money for its use.

They aver that the modification in the time of payment of the interest on the Barnes bonds was not made with any fraudulent purpose, but to make the bonds more available.

They admit the deposit with Chamberlain of $400,000 of the Barnes mortgage bonds, as collateral security to pay a note given to him by the company for $20,000, but deny that said bonds were divided up among the directors; and say that at the maturity of said note to Chamberlain, the company being unable to pay the same, Chamberlain, through his agents, Meigs and Greenleaf, after the officers of the company had procured one or two postponements of sale, sold said bonds, as he was authorized to do, in due course of business, to *bona fide* purchasers; that the bonds sold low, owing to the poor credit of the company, and the doubtful sufficiency of the security; but the sale of the bonds was open, fair, and honest, and the bonds sold for the best price which could be obtained for them; and they aver that the statements in the bill, as to the disposition made of said bonds, are untrue.

They admit that the La Crosse and Milwaukee Railroad Company borrowed money of Gould, Watson, Gilbert, and Foster, and deposited, as collateral security, bonds secured by the Barnes mortgage to the amount of $210,000; and say that this money was borrowed in good faith for the use of the company, and so applied; that, on the maturity of the notes due to said Gould, Watson, Foster, and Gilbert, the company being unable to pay the said notes, the said Gould, Watson, Foster, and Gilbert

proceeded, as they were authorized to do, to sell said bonds; and said bonds were sold by them openly and fairly, and in due course of business; that all of said bonds had, before the foreclosure of the Barnes mortgage, passed into circulation; and the *bona fide* holders of said bonds held the same at the time of such foreclosure free from any equitable defences (if any such there were) which might have been available between the original parties thereto.

They aver that all the bonds secured by the Barnes mortgages were sold or disposed of by the company for the best interests of the company; that said bonds, at the time of the foreclosure, (except about $550,000 thereof, which were held by Stoddard Judd in trust for the farm-mortgage creditors of said company,) were owned by *bona fide* owners, who had received the same in due course of business; that said bonds were all negotiable, being payable to bearer; that said bonds, in the hands of *bona fide* holders, are not subject to any equitable defences which might have been interposed between the original parties thereto.

They state the names of creditors, and the amounts paid in Barnes bonds.

They deny fraud in the foreclosure of Barnes mortgages, and aver that the same was made in good faith.

They deny fraud in the issue of the Barnes bonds.

II.—Statement of the Evidence.

From the analysis of the pleading in the case, which is here submitted, it appears that the purpose of the bill is to set aside the Barnes foreclosure and sale as fraudulent.

The determination of this question involves a consideration of the evidence in the case.

The answer denies the charges of fraud, which denial must be taken as conclusive, unless it is overcome by the evidence introduced.

The evidence relied upon by the complainants is as follows:

Ludlow A. Battershall knows Albert C. Gunnison. Thinks he remembers an interview with Mr. Russell Sage, in company with Mr. Gunnison, in which interview witness endorsed over to him (Gunnison) a certificate or certificates of stock in the Milwaukee and Minnesota Railroad Company for four hundred shares. Thinks the stock was put in witness's name, at the first instance, without his knowledge. * * * Witness had no interest in the bonds which were exchanged for the stock he transferred to Gunnison. * * * For this particular

assignment for this particular stock Gunnison paid witness nothing, and witness does not think he had any interest whatever in the stock. In any connection in which his name appears, as to the stock which he transferred to Gunnison, it was entirely for his (Gunnison's) interest, and not for witness's. The bonds which witness owned had no connection with this stock which he transferred to Gunnison. (Transcript, p. 82, 83.)

Alfred Noxon was a director in the La Crosse and Milwaukee Railroad Company, from November, 1857, to May, 1858, and then subsequently elected a director after an interval of a few months, and from the time of that election was a director till after the sale of the road under the Barnes mortgage. Proves the giving of the note to Chamberlain for $20-000. Don't know, of his own knowledge, what became of the $400,000 bonds given to Chamberlain as collateral security to said note. Have been told by A. C. Gunnison, and others of the then directors, that they, with some of their friends, had taken them at a price which would pay principal and interest of the note. It was concluded that the company had not the power or means to take them (the bonds) up, but that if any of the individual members felt disposed to take them up, they could do so. Knows of no efforts made by the board to prevent the sale of the bonds, except an effort to induce Chamberlain to hold his paper, and take the amount from the receipts of the road. Have been told by A. C. Gunnison, William Platt, and A. S. Bright, that they purchased some of the third mortgage bonds sold by Meigs & Greenleaf. Owned some of third mortgage bonds; obtained about $27,000 of them from the company by funding indebtedness of the company. For a portion of these paid par, and the other seventy cents on the dollar. Obtained $75,000 of them by paying a note of Roscius R. Kennedy for $3,750 and interest, for which the said bonds were held as collaterals. Purchased some from Seth R. Foster, don't know how many, at ten cents on the dollar. Purchased $30,000 more from George W. Luther, at the same rate. Understood, from parties interested, that the bonds deposited with Chamberlain were offered for sale, and no bids being made, they were then sold at private sale,—Gunnison, Bright, Platt, and others taking them at about five cents on the dollar. (Transcript, pp. 84, 85, 86, 87.)

William A. Guest was a director in La Crosse and Milwaukee railroad in 1858; bought third mortgage or Barnes bonds; impression is that the first $20,000 of bonds that he purchased came from Meigs & Greenleaf. (Transcript, p. 89.)

Russell Sage was present at the sale by Barnes. Barnes did not cry the sale for a longer time than from three to five minutes. After the sale Barnes hurriedly left Milwaukee. After the Barnes sale, Sage was appointed president of the new company. Acted as president for two years. S. A. Battersall, accompanied by A. C. Gunnison, presented $40,000 of bonds in exchange for stock. Battersall then said he had allowed Gunnison to use his name as owner of the bonds, but that he, Battersall, had no interest in them. Gunnison said they were part of the Chamberlain lot of bonds. Issued the stock in the name of Battersall, and Battersall assigned it over in blank and delivered it to Gunnison. William Platt, director and vice president of the La Crosse and Milwaukee Railroad Company, negotiated for the conversion of $50,000 of the Barnes bonds into stock. He (Platt) said he had taken $100,000 of the Barnes bonds at the sale of the $400,000 lot of Chamberlain's, and that he had agreed with A. S. Bright to let him have $50,000 of said $100,000 at cost, which was five cents on the dollar and brokerage. Alfred Noxon, another director in the company, also negotiated for the conversion into stock of $75,000 of the Barnes bonds, in the name of Roscius R. Kennedy, and understood Noxon to say that the $75,000 of bonds was part of the Chamberlain lot. (Transcript, pp. 93, 94, 95, 96.)

William Platt was a director in La Crosse and Milwaukee Railroad Company, in September, 1858. Understood that parties contributed the amount to pay the Chamberlain note, and divided up the bonds, one A. S. Bright contributed one-fourth of the amount, which entitled him to $100,000 of the bonds. Heard from A. C. Gunnison, that he contributed and took part of the bonds. An arrangement was made between Bright and witness, by which they were to share equally in the bonds which he (Bright) took. The directors of the company had no way to pay the Chamberlain note except by disposing of the bonds. Understood directors applied to moneyed men to take up the bonds and pay the Chamberlain note. (Transcript, pp. 100, 101, 102.)

A. C. Gunnison was a director in La Crosse and Milwaukee railroad in 1858; was a director at time of Barnes sale; bought $10,000 of the Barnes bonds from Watkins' estate; bought others since. (Transcript, pp. 104, 107.)

S. H. Alden was a director in La Crosse and Milwaukee railroad; thinks it was in 1854; owned about $30,000 of the Barnes bonds, received from president of company. Disposed of them many years ago. (Transcript, p. 112.)

N. P. Stanton was elected president of La Crosse and Milwaukee railroad in April, 1858. A. C. Gunnison, Eli Perry, William Watson, D. V. N. Radcliff, Artemas Fish, George W. Luther, J. H. Shears, John P. McGregor, William E. Smith, William A. Guest, and Alfred Noxon, were directors while witness was president. Much pains were used by directors with Chamberlain to pay the $20,000 note to him, and prevent his sacrificing the bonds. Guest, Noxon, and Gunnison, in the fall of 1858, were appointed a committee by the directors to settle claims against the company. Believes the directors made a *bona fide* effort to advance the amount of the Chamberlain note. Had no interest in Barnes mortgage bonds while officially connected with the road. Bought $2,000 of Barnes bonds from D. V. N. Radcliff, thinks at four or eight cents on the dollar. As president of the company, borrowed money of Watson, Gould, Foster, and Gilbert, and gave notes of company therefor, and Barnes bonds as collaterals, at rate of five to ten cents on the dollar. If at the rate of five cents on the dollar, the bonds deposited would amount to $310,000. The bonds were sold and the notes cancelled. (Transcript, p. 115.)

George W. Luther was a director in La Crosse and Milwaukee railroad in 1858 and 1859; owned alone near $40,500 of Barnes' bonds; bought them some time after they were issued, at about five cents on the dollar; most of the bonds were bought for witness by William Watson. (Transcript, p. 123.)

William Gould loaned $2,500, in fall of 1858, to N. P. Stanton, president of La Crosse and Milwaukee railroad, for which $51,000 of Barnes bonds were deposited as collateral security; the money was not paid, and bonds were sold to William Watson for the amount due; does not know that the Company made any effort to pay said money; witness bought of William Watson, about the same time that he sold to him, about the same number and amount of the same class of bonds, for five or six cents on the dollar; the nominal amount of these bonds was $50,000; witness converted these bonds into stock of the Milwaukee and Minnesota Railroad Company, and two or three years thereafter sold this stock to A. C. Gunnison, at six per cent. of its face. (Transcript, p. 125.)

A. W. Greenleaf proves sale, by Greenleaf & Meigs, of the $400,000 Barnes bonds deposited with Chamberlain as collaterals; sale was private, to following persons, at five and one-eight cents: S. H. Alden, J. M. Lovett, S. W. Odell, E.

A. Billing, S. Perry, W. Watson, J. O'Brien, and H. G. Gilbert. (Transcript, p. 337.)

III.—Conclusions of Law.

1. On review of this full summary of the evidence introduced by complainants, it is respectfully submitted that the complainants have wholly failed to make out a case authorizing this court to decree that the mortgage to Barnes, and the foreclosure and sale by him, are fraudulent and void. In a case of this magnitude, involving the corporate existence of a great line of railroad, the stock of which must, after so many years have elapsed since its original formation, be held by innocent parties, this court would proceed with great caution to set aside such a corporation. Nothing less than the strongest and most conclusive array of evidence would justify such an exercise of the power of this court. It is submitted that the evidence in this case entirely fails to authorize such a decree as is asked for by the complainants. The evidence to prove fraud, giving the greatest force to it, only proves that certain of the directors of the La Crosse and Milwaukee Railroad Company maladministered the assets of the company. The evidence in regard to the purchase, by certain of the directors, of the Barnes mortgage bonds deposited as collateral security with Chamberlain, and other creditors of the company, prove this, and no more; and if this were a suit to render such directors liable to the stockholders of the company for a violation of their trust, it might be very pertinent and efficacious; but as evidence to authorize the dissolution of the company, it has but little relevancy and no force. It is submitted, then, that the complainants' evidence entirely fails to establish fraud in the execution of the Barnes mortgages or the sale by him.

2. The only witness who has undertaken to cast suspicion over the act of sale by Barnes is Russell Sage. Sage thinks Barnes did not cry the sale long enough; but there is no pretence that any one was deterred from bidding at the sale by such asserted haste; nor indeed is there any suggestion that any person other than Barnes had any idea of bidding at the sale. The evidence of Barnes is conducive to this point, however, that there was no improper haste at the sale. It may be remarked, that as Mr. Sage is the only witness who objects to the manner in which the sale was conducted, so he is perhaps the last person who should have raised this objection, as he acted as president of the Milwaukee and Minnesota Company for two years after its formation under the Barnes purchase.

The fact that he was, at the time of giving his evidence, president of the St. Paul and Milwaukee Railroad Company, the great rival of the Milwaukee and Minnesota Railroad Company, furnishes perhaps the only solution of his conduct, especially when we remember the affidavit previously made by him, to be found at page 229 of the Transcript.

3. It is submitted, that whatever might be the merits of the complainants' case abstractly, yet that too great delay occurred before filing the bill. The Milwaukee and Minnesota Railroad Company was organized in 1859, and the bill in this case was not filed until April, 1863. Within that period vast numbers, doubtless, of innocent parties, acting in good faith, had become holders of the Barnes bonds, and stockholders in the present company. To disorganize that company now would do incalculable mischief to innocent parties, and the complainants, if they had any merits in their case, have not shown sufficient diligence to entitle themselves to relief at such great sacrifice to the present stockholders in the company.

It is a case of manifest laches, closely resembling that of Peabody *vs.* Foster, 6 Allen, 52.

4. It is further submitted, as a conclusive objection to the relief sought by complainants' bill, that the State of Wisconsin, by express act of its Legislature, authorized the foreclosure, sale, and purchase by Barnes, (Act of 8th of February, 1859, chap. 10, session laws of 1859,) and has further, by another act of its Legislature, subsequent to the formation of the present Milwaukee and Minnesota Railroad Company, recognized it as a valid organization under the laws of the State; (Act of March, 6, 1862; chap. 2, of local laws.)

By the 34th section of the laws of the United States, ch. 20, 1 Statute at Large, p. 73, it is provided that "the laws of the several States, except where the Constitution, treaties, or statutes of the United States shall otherwise require or provide, shall be regarded as rules of decision in trials at common law in the courts of the United States, in cases where they apply." This is understood to apply to positive statutes of a State, and to rights and titles to things having a permanent locality, such as real estate and other matters immovable and intraterritorial in their nature and character. (Swift vs. Tyson, 16 Peters, 1.)

It would seem that nothing could be imagined more essentially local than a railroad company deriving its corporate existence from the State law, and situated within the State lines, and fixed to the soil. The words of the 34th section of the judiciary act, it is true, provide for its application to "trials

at common law," and this is a case in equity. But this court, acting in a case of equity, will consider itself equally bound by this rule of decision.

The Legislature of Wisconsin having by special act authorized Barnes to sell and buy in the road, and having since by further act specially recognized the validity of the sale and purchase by him, and the organization of the present company, seems absolutely to dispose of this case against the complainants.

C. CUSHING,
Counsel of Defendants.

Carlisle

1. Simple case of creditor seeking to set aside a fraudulent sale
2. Mortgage made when Lab [illegible] hopelessly insolvent
3. Made to add debt 2 mills but pay none
4. Makers divided 1/2 mill among themselves at 5 cts a [illegible]
5. Barnes that [illegible] is in no way interested in result
6. Suggests that [illegible] redeem for what? No rights [illegible] from [illegible] mortgage
7. Only $35000 [illegible] debts sale [illegible] mortgage — [illegible] debts antecedent

Supreme Court of the United States.

No. 56.

December Term, 1867.

FREDERICK P. JAMES, ABRAM BREWER, E. BRADFORD GREENLEAF, PHILIP S. JUSTICE, ELKANAH COBB, JOHN V. BEAN, PHILIP WILSON, and J. HOWARD MITCHELL, Appellants,

VERSUS

La Crosse and Milwaukee Rail Road Company, Milwaukee and Minnesota Rail Road Company, and Selah Chamberlain.

JOHN W. CARY,
Of Counsel for Appellants.

McGILL & WITHROW, Printers and Stereotypers, Washington, D. C.

Supreme Court of the United States.

No. 55.

DECEMBER TERM, 1867.

FREDERICK P. JAMES, ABRAM BREWER, E. BRADFORD GREENLEAF, PHILIP S. JUSTICE, ELKANAH COBB, JOHN V. BEAN, PHILIP WILSON, AND J. HOWARD MITCHELL, APPELLANTS,

vs.

LA CROSSE AND MILWAUKEE RAILROAD COMPANY, MILWAUKEE AND MINNESOTA RAILROAD COMPANY, AND SELAH CHAMBERLAIN.

This suit is in the nature of a creditor's bill, brought by the complainants in behalf of themselves and all other creditors of the La Crosse and Milwaukee Railroad Company who have a claim or lien upon the La Crosse railroad, and seeks to reach the property of the La Crosse and Milwaukee Railroad Company, now claimed by the Milwaukee and Minnesota Railroad Company, and have it sold and the proceeds applied to the payment of the debts of the La Crosse Company in the order of priority.

The bill sets forth the several judgments upon which it is founded, giving their dates, amounts, and ownership, as follows:

A judgment in favor of Edwin C. Litchfield, for $26,353 51, docketed October 5, 1858, owned by James & Brewer; a judgment in favor of N. S. Bonton, for $7,937 37, docketed April 5, 1859, owned by James & Brewer; one in favor of Justice, Cobb, Bean, Wilson, and J. Howard Mitchell, for $285 33, docketed September 21, 1858, owned by them; and one in favor of E. Bradford Greenleaf, for $840 06, docketed September 10, 1860, and owned by him.

All of said judgments were recovered and docketed against

the La Crosse and Milwaukee Railroad Company subsequent to the giving of the Barnes mortgage, on the pretended foreclosure of which the Milwaukee and Minnesota Railroad Company was organized, and during the years 1858–'59–'60. The bill sets forth that executions had been issued and returned *nulla bona* on all of said judgments, before the filing of this bill, and alleges that the directors of the La Crosse and Milwaukee Railroad Company, in June, 1858, with the fraudulent intent of having said railroad sold, and of themselves becoming the purchasers, and entirely depriving the creditors and stockholders of all right and interest in said property, fraudulently executed to said Barnes a mortgage, divided up the bonds issued under it among themselves, at the rate of five cents on the dollar, fraudulently procured its foreclosure and purchase for their benefit, and thereupon formed the Minnesota Company.

The bill of compliant sets forth that the La Crosse Company built the railroad from Milwaukee to La Crosse, and owned said road and its rolling stock, subject to the mortgages thereon to Francis A. Palmer, the city of Milwaukee, Bronson, Soutter & Knapp, Bronson & Soutter, and J. Albert Helfenstein, setting out the dates and amounts of each.

That on or about the 1st day of June, 1858, said La Crosse Company was indebted to a large amount, and greatly embarrassed in its pecuniary affairs, and that a large floating debt had accumulated against said company for rolling stock and materials furnished and labor performed for said company, which remained unpaid and unsecured, and that the aggregate amount of debt existing against said company at that time, including the mortgage debt, was over ten millions of dollars, besides interest and liabilities to farm mortgagors, and that the road was then in the hands of Selah Chamberlain, under a mortgage lease to secure him the amount his due.

That on the 1st day of June, 1858, the directors of the La Crosse Company authorized an issue of bonds of said company, to the amount of two millions of dollars, to be secured by a mortgage upon the entire line of the road from Milwaukee to La Crosse, including all rolling stock and personal property of said company, with interest at seven per cent. per annum from the 1st of July, 1858, payable semi-annually, the first interest payable on the 1st day of July, 1859; and on the 15th of June, said authority was amended by five of said directors, at a pretended meeting, so as to make the first interest payable January 1st, 1859. That on the 21st day of June, said mortgage was executed by the officers of said company to Barnes,

and said two millions of bonds were executed, drawing interest from July 1, 1858, and the first installment payable on the 1st day of January, 1859; and on the 11th day of August, 1858, the president and secretary of said La Crosse Company executed a supplementary mortgage further to secure said bonds.

The bill charges that said mortgage was executed in fraud of the creditors and stockholders of said company, and without authority of law; that it was not executed to secure any amount borrowed or owing by said company, but for the purpose and with the design of bringing about a speedy sale of said road and its franchises, cutting off the stockholders, and to hinder, delay, and defraud the creditors of the said La Crosse Company, and passing the title and property of the road, and its franchises, to some of the directors and their friends; that said five directors of said company, at said pretended meeting, which they called a meeting of said board, but which was not authorized by law, changed the day for the first payment of interest from July to January, which was done that they might the more speedily carry out their fraudulent design of selling out said road; and at the same meeting William A. Guest, Albert C. Gunnison, and Alfred Noxon were appointed a committee to dispose of said bonds upon such terms and at such rate as they should think proper.

That, soon after, said committee settled a claim that said Chamberlain had against the company, paying him $5,000, and giving a note for $20,000; that for the $5,000, so paid, $100,000 of said bonds were sold or pledged, and that $400,000 of said bonds were deposited with said Chamberlain as security for said note, and that said committee afterwards, and about the 10th of January, 1859, divided up said bonds among themselves and friends as follows: said Gunnison, $75,000; William Platt, one of said directors, $100,000; said Guest, $50,000; Luther, one of said directors, $50,000; said Noxon, $75,000; and one Gilbert, $50,000; and portions thereof came to Stanton, the president, and Alden, a director, some of which bonds were received by these persons directly, and others by their accomplices and agents for them.

That on the 13th day of December, 1858, said directors, in further execution of said illegal and fraudulent design, held a pretended meeting at Albany, New York, at which a preamble or recitation was made that information had just been received that $15,000 was needed to save a large amount of the company's property from sale and total loss; and thereupon the president was directed to borrow a sum of money not ex-

ceeding that amount, to be used to save said property from sale, and to sell, pledge, or hypothecate any bonds or securities belonging to the company for that purpose, on the best terms he could; that said President Stanton, during said month of December, borrowed $2,500 from William Gould, and the same from William Watson, giving the company's note therefor, payable in a few days thereafter, and gave to each of said parties $50,000 of said bonds, and about the same time borrowed $3,000 of Seth R. Foster, and $7,500 of H. G. Gilbert, giving like notes as above, and depositing said bonds at the rate of five cents on the dollar, making $15,500 borrowed, for which $310,000 of said bonds were deposited; and that these loans were made with the understanding of all parties that said notes would not be paid or said bonds redeemed.

That it was utterly false that said company was in any danger of losing its property, or any portion thereof, by sale or otherwise, as said directors well knew; that McGregor and Smith, the directors resident in Wisconsin, had arranged said claims, and Chamberlain, the lessee, was ready and willing to advance the necessary means to pay the same when requested, and had already paid one of said claims, which facts were well known to said directors at Albany; that said President Stanton, in the latter part of December, visited Milwaukee, for the ostensible purpose of paying said claims, but was then informed of the arrangements made, and requested to return said money and take up said bonds, which he refused to do, but insisted upon paying a portion of one of said claims, and refunding to Chamberlain what he had paid; that at the time said money was borrowed there was over $12,000 in money and other securities in the hands of said directors and said Alden, and in the hands of said president, and under his immediate control, belonging to said company, moneys enough to have paid said encumbrances, aside from the money so borrowed, and that of the money so borrowed only $7,500 was applied to the uses of said company; alleges that said directors and bondholders have confederated together to hinder and delay creditors; that said bonds so delivered to said Gould, Watson & Foster were divided among them without sale, and that the bonds so delivered to said Gilbert were divided up among said directors and their accomplices, $75,000 going to one Roscius R. Kennedy, for said Noxon, and that other of said bonds were disposed of by said committee at five cents on the dollar; that only about $200,000 of said bonds were disposed of in payment of the debts of said company, and that they were

exchanged for the indebtedness of said company at par, in Wisconsin, and to the citizens of Wisconsin.

That in pursuance of said fraudulent scheme, said directors made no provision for the interest on said bonds, and said Barnes, on the 1st of February, 1859, commenced a foreclosure by advertisement, and on 21st day of May pretended to sell the mortgaged property to himself, as trustee for the bondholders, (his bid being the only one made at the sale,) for the sum of $1,593,000 33, payable in said bonds, and immediately after said sale said bondholders and said Barnes organized the Minnesota Company.

That neither said bonds or stock of said pretended Minnesota Company ever had any market value, were never quoted at any stock board, and the only sales or transfers made have been private transactions and between parties fully notified and advised of the fraudulent character of said stock and bonds; that said Barnes was cognizant of said fraudulent character of said bonds; that said road was sold at the par value of said bonds, with interest and cost, in pursuance of said fraudulent scheme, to prevent a redemption either by the stockholders or creditors; that at the time of the sale a large part of the bonds were undisposed of and unnegotiated, but were reckoned in payment of said pretended bid; shows that the road is in the hands of a receiver, and that the La Crosse Company has ceased to exist as an active corporation, and the road has never been in the hands of the Minnesota Company.

The bill prays that all the property, real and personal, franchises and privileges, of the La Crosse and Milwaukee Railroad Company, or which was theirs at the time of said sale by said Barnes, May 21, 1859, now in the possession of the receiver of the United States circuit court may be sold, subject to the prior claims, and that the proceeds of said sale be brought into court, to be divided according to the legal priorities of your orators and the other claimants thereto; that said Barnes mortgage may be decreed to be fraudulent and void, and that said Minnesota Company take nothing by said sale, and be perpetually enjoined from setting up any right under said sale. (Record, pp. 2 to 16.)

The answer of the Minnesota Company admits the recovery of the judgments, and insists that the Litchfield judgment is paid and equitably belongs to the Minnesota Company. Admits execution of the prior mortgages and Chamberlain's lease, but alleges the lease was made to defraud creditors, and was vacated by the district court, and that he is not a lien

creditor. Said answer then sets forth the making of the mortgages, the issuing the bonds in payment of debts and for other purposes, the default in payment of interest, the proceedings to foreclose, the sale and purchase by Barnes, the formation of the Minnesota Company, and claims that it succeeded to all the rights of the La Crosse Company. (Record, pp. 23 to 28.)

Denies that complainants' judgments ever were liens, but if they were they were subsequent to the Barnes mortgage, and their lien extinguished by that foreclosure. Denies that said Barnes mortgage was made or executed in fraud of the rights of creditors or stockholders, but was made *bona fide* to secure the debts of the company, and for the other legitimate uses of the company. Denies that they were executed to procure a speedy sale of said road or the transfer thereof to the directors thereof or their friends. (Record, p. 28.)

Admits that certain of the directors directed the alteration of said bonds, so as to make the first interest payable in January instead of July, as alleged, but claims that their act was afterward ratified by the board, and that it was not done to defraud, but to make the bonds more available.

Admits the settlement with Chamberlain, payment of $5,000, and giving note for $20,000, and the giving of $400,000 of said bonds as security for said note, and that the $5,000 was raised on the hypothecation of other of said bonds, but denies that on or about January 15, 1859, said bonds were divided up by said committee among themselves and friends without being sold, but says Chamberlain was fully authorized to sell said bonds at the maturity of said note, and that at its maturity the company were greatly embarrassed, and unable to raise the money, and that Chamberlain, by his brokers, Meigs & Greenleafe, sold said bonds honestly and fairly, and as he was authorized to do, for the best price that could be obtained, but that they sold very low.

Denies that any of said bonds were disposed of fraudulently, but were sold honestly and for the best price that could be obtained.

Admits that certain of the directors, at Albany, on the 13th of December, 1858, passed the recital and resolutions mentioned in the bill; that said action was afterward ratified by the board; that said directors believed said recitals true, and that they were true.

Admits the borrowing the money of Gould, Watson, Foster, and Gilbert; the giving the notes of the company and pledge of bonds to the amount of $310,000, as charged, but denies

that there was any understanding that said notes would not be paid or securities redeemed. (Record, pp. 30 and 31.)

Alleges that said money was borrowed in good faith for the necessary and legal business of the company, and not used by the president or directors for any other purpose, and denies all fraud or intention to have said bonds sold, and denies that said directors did not intend to have said notes paid at maturity, and insists that it was necessary to borrow said money, and that the company was greatly benefitted by so doing.

Denies that Gould, Watson, Foster, and Gilbert were authorized by the directors to divide up said bonds, or that they did so divide them, but were authorized to sell them at maturity of their said notes, and that they did sell them, openly and fairly, for the best price that could be obtained in due course of business, and that all of said bonds had been sold before the foreclosure of said mortgage, and had passed into the hands of *bona fide* holders in the bond and stock markets of the United States, free and clear from all equities.

Alleges that all the bonds had been sold before foreclosure except $550,000, placed in the hands of Stoddard Judd for the farm mortgagors, and had been sold in the stock-market, were payable to bearer, and are not liable to be defeated by any equitable defence.

The answer then sets out the payment of $158,802 of the debts of said La Crosse Company, with their bonds at par; denies that the Barnes foreclosure was in pursuance of any fraudulent scheme, but in good faith, and that the La Crosse Company had authority by law to sell and dispose of its bonds at such rates and for such prices, and at such discount as it thought for its own best interest; admits that it has not been in possession, and that road is in hands of receiver.

Denies that Barnes was advised of any fraud of the directors, or that he confederated with them to procure the sale of the road, or was guilty of any fraud.

The Barnes mortgages are attached as exhibits to the answer.

There was a replication and proofs taken.

Ludlow A. Battershall testifies that certificates for four hundred shares of Minnesota stock were issued to him without his knowledge, and that he transferred it to Albert C. Gunnison, without consideration. He had no interest in this stock, and if he ever had the bonds exchanged for it, he received them from Gunnison, and had no interest in them. (Record, 82 and 83.)

Alfred Noxon testified he knew of the depositing $400-000 with Chamberlain, as security for $20,000, and was one of the board. No effort was made to provide for the note and prevent a sale of bonds, but it was understood that individuals of the board would advar ce the money, and take the bonds, if sold, and these bonds were afterwards taken at five cents on the dollar, by Gunnison, Platt, and A. S. Bright, president of the Minnesota Company. Noxon procured $75,000 of them by paying Kennedy's note, given for them, at five cents on the dollar; also got bonds from Foster, and $30,000 of Luther, a director, and paid ten cents for them. Kennedy acted as an agent for Noxon, and obtained bonds of Gilberts, who had them as collateral to a note of $7,500. (Record, 84 to 88.)

Wm. A. Guest, a director at the time, and one of the committee, purchased $20,000 of the Chamberlain bonds at five cents and brokerage charges. Was one of the committee that gave the note and caused bonds to be deposited. No effort to pay it. He had a large amount of these bonds on his hands to dispose of. He disposed of some, and returned the rest to president, but is utterly unable to tell anything about how many, to whom, or for what disposed of, or how many returned to the president. (Record, 89 to 92.)

Russell Sage proved the assignment of the Litchfield judgment to James & Co; that $103 of the bonds issued under the Barnes mortgage were never negotiated, but cancelled; that Barnes's bid was seventy-five per cent. of the whole $2,000,000, with interest, costs, and expenses; that on the formation of the company Gunnison had issued to him stock for $40,000 of the Chamberlain bonds. William Platt, a director and vice president of the La Crosse, had $100,000 of said bonds, and had stock issued to him for one-half thereof, and the other half to A. S. Bright and Alfred Noxon had$ 75,000 issued in name of Kennedy. These bonds and this stock never sold at stock board, and had no market value. (Record, 94 to 97.)

William Platt, vice president and director, testified that he agreed with A. S. Bright to advance one-fourth of the Chamberlain note and take one-fourth of the bonds, and let him have half of the bonds on payiug half of the amount advanced, which was done. (Record, 100 to 102.)

Albert C. Gunnison, a director and one of the committee, and ever since one of the chief men in the Minnesota organization, was examined as a witness at considerable length, and the substance of all he said was *non mi ricordo.* (Record, 104 to 111.)

S. H. Alden, a director, was examined, but could remember

nothing whatever about the disposition of these bonds or the Chamberlain bonds, although it appears from the testimony of Greenleafe and his books, that in the division of the Chamberlain bonds, Alden had assigned to him and took and paid for $70,000, at 5⅛ per cent. (Record, 112 to 114.)

N. H. Stanton, president, testified that he got the $15,500 by the pledge of $310,000 of bonds, as stated, and testifies he paid a part of it on the round-house property at Milwaukee, and spent the rest of it for the company prior to the sale on the Barnes mortgage; that no arrangements were made or attempted to prevent a sacrifice of said bonds, and can't say whether McGregor & Smith had arranged the debts at Milwaukee so that it was not necessary to use said money or not, or whether they urged him to return to Albany and redeem the bonds or not; admits bonds were sacrificed for amount borrowed. (Record, 115 to 121.)

George W. Luther, a director, purchased $40,500 of said bonds at five cents on the dollar; knew of the Chamberlain transaction, also of the Albany loans. (Record, 124–25.)

William Gould testifies that he loaned the company $2,500 the latter part of the year 1858, and took $50,000 bonds as collateral; that on the maturity of the note, he sold the bonds to William Watson for the amount of the note. At the same time Watson sold him $50,000 of said bonds for a like amount, which he converted into stock of the Minnesota Company, and sold to A. C. Gunnison at six cents on the dollar. (Record 125 and 126.)

The record, from page 128 to 191, contains copies of the several mortgages given by the La Crosse Company.

A further examination of Russell Sage was had at the instance of the Minnesota Company, and is found at pages 249 to 259 of record, most of which is entirely irrelevant; but I refer the court to the answer to interrogatory 13½, page 252, and to pages 257–9, relative to the witness's interest in the Barnes mortgage, and his discovery of the frauds practiced, and showing that Albert C. Gunnison, Aaron S. Bright, Alexander Fleming, N. P. Stanton, William Platt, and Austin Gunnison to have been the principal managers and parties interested in the Minnesota Company.

The deposition of William Barnes was introduced on the part of the defendants, and is found on pages 269 to 284 of record. He denies all knowledge of fraud, and details at length the foreclosure proceedings. The articles of organization of the Minnesota Company are found on pages 293 to

299, and proceedings to foreclose from 301 to 316. The trustee, in all his proceedings to foreclose, claimed that the bonds issued amounted to $2,000,000, and the interest due thereon $70,000. (Record, 303 and 310.)

A. W. Greenleaf testified that the company's note to Chamberlain for $20,000 was left with him for collection, with $400,000 of said bonds, and that said bonds were, on the 7th day of January, divided up by the directors, their agents, and accomplices, at the rate of 5⅛ per cent. on the dollar, and gives from his books the distributions, and the parties receiving them; which division was as follows:

$70,000 to S. H. Alden.
75,000 to J. M. Lovett.
45,000 to S. W. Odell.
40,000 to E. A. Billings.
70,000 to S. Perry.
40,000 to W. Watson.
20,000 to J. O'Brien.
20,000 to H G. Gilbert.
20,000 to J. M. Lovett.

$400,000 (Record, 339.)

These bonds were never sold at the stock board, and could not have been, and were dealt in only by a few persons. (Record, 338.)

The testimony of Austin Gunnison is found on pages 344 to 355, (Record.) He testified that A. C. Gunnison, former director in La Crosse Company, and his friends own and control a majority of the stock of the Minnesota Company. (Record, 348.)

The depositions of Alexander Mitchell, E. G. Ryan, W. P. Lynde, S. Chamberlain, and N. P. Stanton are found on pages 358 to 384 of record, and were introduced by the defendants.

The deposition of Selah Chamberlain, on the part of complainants, on pages 384 and 385, shows that he had arranged to pay the claims on the round-house property, for the payment of which it is pretended the $15,500 was borrowed at Albany, and that he so informed Stanton, the president, but that Stanton afterwards paid about $6,000 on that claim, and paid out the balance of the money to the officers and directors of the company on various claims and salaries. Stanton also testifies that this money was so disposed of.

The testimony of Stoddard Judd, on pages 391 to 401 of record, shows that $550,000 of these Barnes bonds were left with him, as trustee for the farm mortgagors, on certain conditions, to be complied with before May, 1859, which was

afterwards extended to May, 1860, but that only $700 had ever been so used, and that the balance of said bonds are now in his possession.

On page 401 is a stipulation that the several judgments were recovered, docketed, and executions issued and returned, as stated in the complaint.

I.

On the record before us the complainants insist that the Barnes mortgage was executed in fraud of the rights of creditors, with the design to hinder, delay, and oppress them, and to have said property speedily sold, so as to cut off and destroy all their rights, as well as the interest of the stockholders of the La Crosse and Milwaukee Railroad Company.

The circumstances of this La Crosse Company, at the time of giving this mortgage, are important to be considered in determining the character of this mortgage.

The company was indebted to the amount of about $10,000,000. The road and all the property of the company was in the hands of Selah Chamberlain, who had constructed it, under his mortgage lease, and had been for nearly a year, and all the revenue and income of the company in his hands, pledged, first, to pay operating expenses; second, interest on mortgage liens; and third, all the balance to be applied on the indebtedness to him, amounting to nearly $1,000,000, until fully paid. (Record, 192 to 194.)

The company was in fact bankrupt, and had been from the fall of 1857, and had not paid anything, and had been unable to pay anything since that time.

The directors, therefore, knew when they made this mortgage that the company had no means, and would have none, to pay either principle or interest of the said bonds, and that default would inevitably be made in the payment of the first installment of interest.

It is now claimed that bonds to the amount of two millions of dollars, issued by a company in this situation, must be treated as a negotiable security, and accorded the full presumption which attaches to such paper, of having been issued *bona fide* and for a valuable consideration, and that the holders thereof are innocent purchasers, and all presumptions are in their favor.

We submit that the fact that this corporation, under such circumstances, put out that amount of securities is sufficient

to discredit these bonds, and put everybody upon their guard in relation thereto.

Another suspicious feature in the issue of these bonds is the time fixed for the payment of the first installment of interest.

It was first determined to make the first installment of interest payable on the 1st of July, 1859, which was afterwards altered by certain of the directors so as to make it payable on the 1st day of January, 1859. So that, in fact, the first installment of interest, and for the default of which the foreclosure was had, was due and payable before the bonds ever passed from the hands of the directors.

No reason was given for this alteration, and we claim that the object was to hasten a foreclosure; and all the facts in the case fully justify our conclusion. We therefore insist, that regarding the making of this mortgage alone, when the circumstances of the company are considered, that it sufficiently appears that it was intended as a fraud on the part of the directors, designed to cut off the stockholders and to absorb the whole property of the company, thereby defrauding, hindering, and delaying the creditors in the collection of their debts, and of absolutely depriving them of all hope or chance of ever realizing anything on their demands. The subsequent conduct of said directors, in disposing of said bonds, which will be considered under the next head, may also be taken as evidence of the real design of the directors in making this mortgage, and is perhaps the best evidence of their object in making it. Looking at the case as it now appears, no one can for a moment doubt that the whole transaction was intended as a downright cheat and fraud from the beginning, and that said mortgage and all proceedings under it should be set aside and vacated.

II.

The disposition of the bonds under this mortgage, by the directors of the La Crosse Company, was a gross fraud upon the creditors of said company and all other parties having an interest in the property, and for that reason the bonds and the mortgage, and all proceedings in connection therewith, should be set aside and cancelled.

The resolution authorizing this mortgage is found at pages 285 and 286 of record. The object stated is to provide for the floating debt and relief of farm mortgagors, but the resolution does not purport to pledge or appropriate said

bonds to any such purpose, and their subsequent disposition clearly shows that such was not the intent of the Albany managers or directors of said company.

Let us examine the actual disposition of these bonds, as shown by the record.

Five hundred and fifty thousand dollars were appropriated to the farm mortgagors and deposited with Stoddard Judd, of Wisconsin, to be paid by him to said farm mortgagors at the rate of fifty cents on the dollar of their mortgages, on their releasing the company from its agreement with them to pay interest on their mortgages and guarantee a dividend on their stock. The farmers were required to accept these terms on or before the 15th day of December, 1858, otherwise said bonds to be cancelled. In January this privilege was extended to them until May 1, 1859. And in March, 1859, the privilege was further extended to May 1, 1860, and if not then accepted, said bonds were to be cancelled.

One of said farm mortgage stockholders accepted this proposition and received $750. No other one has ever accepted it, and said bonds have never been used, except said trustee has appropriated to himself $5,000 as his pay for executing said trust. (Record, pp. 391 and 401.)

These bonds, therefore, have never been negotiated, and cannot be relied on for any purpose. They were never accepted by the farm mortgagors, and are not now and never were a lien upon said road, or a security under said mortgage. The trust expired in 1860, and these bonds are the same as cancelled.

The bill of complaint alleges that only about $200,000 were issued to *bona fide* creditors of said company, in payment of its debts and in payment of coupons on land-grant bonds. This statement is made on information and belief, (Record 12;) but the answer purports to give the payments so made) the amount paid to each and the persons to whom paid, on pages 32 and 33, Record, and the total amount so stated as paid to the creditors of the La Crosse Company amounts to the sum of $158,802, so that the bill considerably overstates the amount actually paid on the indebtedness of the company. We are unable to find that any other portion of the indebtedness of said company was ever paid by an exchange for these bonds.

The bill charges that five hundred thousand dollars of these bonds were disposed of among said directors and their friends, to raise $25,000 to pay Chamberlain. (Record, 9.) The answer admits this charge. (Record, 29.) The bill

charges that this disposition was fraudulent, with a view to have said bonds divided up among said directors, and have said mortgage foreclosed and the road transferred to them; and that, with that view, they took no steps to redeem said bonds or provide any means to prevent a sale and sacrifice of them; and that, in January, 1859, said directors, in person, or by their agents and friends, divided them among themselves, at the rate of about five cents on the dollar. The answer denies the frandulent intent, but admits that no means were provided to prevent their sale or sacrifice, and no steps taken for that purpose, and that they were sold at about five cents on the dollar. The proofs show that said bonds were divided or apportioned substantially as charged in the complaint on the 7th day of January, 1859; that William Platt, then vice president of the La Crosse Company, took $100,000, and divided the same with Aaron S. Bright, now president of the Minnesota Company, at 5⅛ cents on the dollar; that S. H. Alden, a director, had $70,000, and A. C. Gunnison, a director, and late president and vice president of the Minnesota Company, had $75,000; and that all of said lot of bonds went either directly or indirectly to the said president and directors of the said La Crosse Company and their immediate friends and accomplices.

See the testimony of Greenleaf, Noxon, Sage and Platt, above referred to.

The bill of complaint charges that $310,000 of these bonds were pledged to different parties at Albany for a loan of $15,500; that the pretence for making said loan was fraudulent, and the object was the same as last above stated; and that the bonds were sold for that sum. The answer denies that the pretence for the loan was fraudulent, or that it was with fraudulent intent, as charged, but admits the loan, pledge, and that said bonds were sacrificed for that amount. The proofs show that said bonds were divided up among the directors and their accomplices, and were put into the organization of the Minnesota Company at par, and that no effort was made by the directors of the La Crosse Company to prevent the sale and sacrifice.

(See testimony of Gould, Watson, Noxen, Luther, and Stanton, above quoted.)

The testimony of Russell Sage shows that $103,000 in amount of said bonds, which had been in his hands as an agent for the company, were returned to the company, and were never issued by the La Crosse Company, but were can-

celled. By this examination we find that these bonds were disposed of as follows:

To Stoddard Judd, in trust	$550,000
" Pay Chamberlain—$25,000	500,000
" Borrow money at Albany	310,000
" Returned by R. Sage, and cancelled	103,000
" Exchanged at par for debts	158,802
" Leaving unaccounted for	378,198
Making	$2,000,000

From this examination it appears that $158,802 was exchanged for debts, and $750 for farm-mortgage obligations, making in all $159,552 exchanged in discharge of the obligations of the company.

The bonds left with Judd, and those returned by Sage have never been negotiated or issued.

This suit is brought directly against the La Crosse and Minnesota companies, and attacks the whole title of the Minnesota Company and its existence as a corporation based upon this foreclosure, and we have proved sufficient to put it on its defence to show the legality and regularity of its existence. It was therefore incumbent upon it to show this whole proceeding fair and honest. The *onus probandi* was upon the defendants to show what disposition was made of said $378,198. This is not attempted, and we are left wholly to conjecture as to what ever became of these bonds. Stanton swears that all books and papers in his possession were surrendered to the attorney and managers of the Minnesota Company. The records of the La Crosse Company should show their disposition, if ever disposed of. We therefore assume, as we are justified in doing, that there never was any legal disposition of these bonds, but that they were absorbed by the directors and their associates, and therefore should be regarded as never negotiated.

The disposition of the bonds, in connection with Chamberlain's claim and the loan at Albany, cannot be treated as valid sales or entitled to any consideration. To regard them as honest and fair transactions would be a disgrace to our jurisprudence and destructive of all corporate property and trust relations. One of your honors, at this present term, has remarked, "that a court of equity is a court of conscience," and I have no fears that such transactions as these can ever pass the ordeal of your honors' consciences unchallenged. The directors of a railroad company occupy a position of trust, and no court would protect them if they suffered the trust property to be sacrificed and lost from a want of proper

care and attention on their part. In this case there is not only an entire want of proper care and attention to the business of the company, but its property is purposely and intentionally placed in peril, and these guardians, instead of protecting and saving it, make it the occasion of speculation and profit to themselves, whereby the interests of the company are destroyed, and they and their accomplices enriched by the violation of their trusts.

It is difficult to conceive of a grosser or more outrageous fraud than would be perpetrated by allowing this transaction to stand as valid. $158,000 of *bona fide* debts of the La Crosse Company have been paid by taking these bonds at par, and in this new company they are placed on a par with parties who have paid but five cents on the dollar for the interest they represent. And this bogus or fraudulent interest is as eight to one in the new organization. Not only so, but all other creditors who did not accept, or have an opportunity to accept, such terms as these, are entirely cut off and excluded from all participation in the property, and of all hope or chance of collecting their claims.

We, therefore, insist that whatever may have been the validity of this mortgage in its inception, this disposition of the bonds secured by it was utterly fraudulent, as against the creditors of the company and all other parties interested therein, and renders the whole transaction void. (Krohler *vs.* The Black River Iron Company, 2 Black, 715.)

These creditors of the company, who have merely exchanged their existing debts against the company for these securities, are not in the position of purchasers for value or *bona fide* creditors under this mortgage, and will not be injured but greatly benefitted, by being restored to their position of creditors of the La Crosse Company, instead of remaining thus unequally yoked with men who have paid but five cents on the dollar when they have paid par.

We, therefore, insist that the mortgage and all securities under it are fraudulent as to us, and should be set aside and vacated.

III.

The pretended foreclosure of this mortgage by Barnes, under the power of sale by advertisement, without the intervention of a court, was void, and conferred no new rights upon Barnes or the bondholders which they did not have before said foreclosure.

This mode of foreclosure is exceedingly summary, liable

to great abuse, and "there is no proceeding in the whole law of mortgages, at last firmly established, which in its progress has been more seriously questioned or more earnestly resisted, as a manifest infringement upon the privilege, so carefully guarded, of redeeming estates which have been conveyed only by way of security for debt. The final result of the decisions is said to be that a power of sale may be exercised by the mortgagor, where it is *free from doubt.* It will be jealously watched, and declared void for the slightest unfairness or excess, *or for anything which prevents competition,* and the sale will be strictly construed as against the mortgagee." (1 Hilliard on Mortgages, 131.)

This proceeding allows the mortgagee to be his own chancellor to decide the amount his due upon the mortgage, and to determine the time and manner of his sale; and further allows him to be his own marshal, to execute his decree or determination by a sale of the mortgaged property, but all at his peril. No court of equity intervenes to decide upon and determine the rights of the mortgagee, and fix the amount to be collected on his security, but it is all left entirely with the mortgagee. Such a foreclosure would be a monstrosity in the law, and destructive of all equitable and legal rights, were it not that the courts hold such mortgagee to a most strict and rigid rule, and require not only that the whole proceeding shall be free from doubt, but that no act shall be done infringing the just rights of the parties interested, or in any manner tending to injustice or oppression. In other words, a mortgage that would not be sustained in a court of equity cannot be the foundation of a foreclosure by a sale under the power so as to give title to the mortgaged property; and where a court of equity would only make a decree for $200,000, and order a sale for that amount, the mortgagee cannot resort to the power of sale and fix the amount at two millions, and make a valid sale for that sum: and where the mortgagee pursues such a course the sale will not stand as a foreclosure for the amount actually due, but will be held absolutely void, and may be attacked or resisted in any court of law or equity wherever any right is attempted to be set up under it.

If the mortgage is usurious, a sale under it will be void, and convey no title to the purchaser, and the purchaser's claims may be resisted, either at law or in equity, whenever asserted. If the purchaser is in possession, he may be ousted in an action of ejectment, or resisted when he brings ejectment for possession.

Jackson *vs.* Henry, 10 John., 185, was an action of ejectment tried in 1812, brought to recover premises in the possession of a purchaser on the foreclosure of a mortgage by sale under the power, on the ground that the mortgage was tainted with usury. The court held that the purchaser was protected in that case as a *bona fide* purchaser, without notice, but the decision is disapproved in subsequent cases. The case of Jackson *vs.* Dominick, 14 John., 435, was an action of ejectment, tried in 1816, against the purchaser at a foreclosure by sale under the power some four years previous, and it was claimed that the sale was void on account of usury in the mortgage. The defence being established, the court held the sale void, and the plaintiff recovered the mortgaged premises. In this case the mortgagee was the purchaser. The court say: "A foreclosure of a mortgage under the statute is not founded upon any judgment or decree of any court. It is the mere act of the mortgagee, who cannot make that good and effectual by a sale which was unlawful and void in its inception."

The case of Cameron *vs.* Irwin, 5 Hill, 272, was ejectment against the purchaser at such a foreclosure sale, tried nineteen years after the pretended sale. The sale was made in this case after payment of the mortgage, and it was attempted to sustain the sale on the ground of a *bona fide* purchaser. The court disapprove of the ruling in Jackson *vs.* Henry, and hold that there must be a valid mortgage and power, and say, "Surely, an assignee has not come to be considered as holding by a right paramount to that of his assignor, like a *bona fide* holder of commercial paper," and hold that the purchaser, although entirely ignorant of the payment, took no title by this foreclosure.

The case of Jencks *vs.* Alexander, 11 Paige, 619, is a suit in equity to set aside a foreclosure by advertisement under the power, on the ground that the foreclosure was not honestly and fairly conducted. The sale was made on the 23d of April, 1836, and the bill to set aside the foreclosure was filed in June, 1839. The notice of sale stated the amount due at forty cents more than was actually due, which the chancellor considers a mere mistake in computing the amount due, and not of itself furnishing any sufficient ground for setting aside the sale. The notice of sale did not state the amount thereafter to become due, subject to the payment of which the sale was made; and the chancellor says, "I think the sale, which was made in this case without specifying the exact amount of the future instal-

ments to which the premises were to be subject in the hands of the purchaser, was calculated to destroy fair competition, and was sufficient to avoid the sale, even if the proceedings in other respects had been conducted in good faith."

In the case at bar the notice set forth that the mortgage was for two millions of dollars, and that seventy thousand dollars of interest had accrued and was due thereon. We have already seen that six hundred and fifty-three thousand dollars of said bonds had never been issued at all, and nearly twelve hundred thousand dollars of the balance had not been legally issued, but only fraudulently distributed among the directors, who became in fact the purchasers at this pretended sale. Hence, we may say, with much more force in this case, that the notice of sale was calculated to destroy all fair competition, and, in fact, operated to exclude from said purchase everybody except the originators of the fraud.

The authorities all agree that such fraud and misrepresentation render such sales void. (Longwith *vs.* Butler, 3 Gilman, 32; Burnett *vs.* Denniston, 5 John. Ch'y. 35; Klock *vs.* Cronkhite, 1 Hill, 107; Bunce *vs.* Reed, 16 Barbour, 347; Rathbone *vs.* Clark, 9 Abbott's Pr., 66; Jackson *vs.* Clark, 7 John., 217; Miller *vs.* Hull, 4 Denio, 104; Hyland *vs.* Stafford, 10 Barbour, 558.)

Wherever the mortgage is fraudulent, usurious, or otherwise void, or where the foreclosure proceedings are not in all respects fair and honest, and strictly in pursuance of the power in the mortgage and the statute regulating the proceedings, the foreclosure is absolutely *void*. The above cases fully sustain this position, and see Koehler *vs.* Black River Falls Iron Co., 2 Black., 715, as to what acts of directors renders a mortgage frudulent.

That this foreclosure was fraudulent, and that the whole contrivance of the mortgage and foreclosure was a scheme to defraud creditors and divest the stockholders of their property and just rights, is apparent from the time of the disposition of these bonds and the commencement of this foreclosure.

The bonds that were pledged to Chamberlain were delivered to him in October or November, 1858, and were finally divided up among the confederates on the 7th day of January, 1859.

The $310,000 distributed among the Albany friends were not delivered to them until after the 13th of December, 1858; and when the remaining $378,000 were distributed, we have no information.

The proceedings for foreclosure were commenced early in January, 1859.

When this mortgage was executed, there was no law authorizing a trustee to bid off the property for the bondholders. Barnes procured such an act to be passed, as he testifies, and his bid, which was in writing, and is found on pages 290 and 291 of record, is a curiosity, and is in fact no bid, and for that reason the pretended sale and foreclosure should be held fraudulent and void. The bondholders not assenting to it, could not be bound by it. There was nothing paid on this pretended bid—not bonds even. The bid was for no fixed and definite amount, but was one thing in one event and another in a different, but in no event a substantial benefit. Bondholders and creditors have attacked this foreclosure in the State courts, but have been denied relief on the sole ground that the property was in the hands of the United States court, and for that reason turned over to the United States court for relief, on the ground that the State court could not interfere so long as said property was in the hands of a receiver of the United States court; hence this suit. One of these cases is found reported in 20 Wis., 165.

At the time of making this mortgage and the pretended foreclosure, the La Crosse Company was not in possession of any part of said mortgaged property, as we have seen, but the whole thereof was in the hands of Selah Chamberlain, where it remained until the appointment of a receiver by the district court of the United States, who remained in possession until after the commencement of this suit. And up to that time no suit or other proceeding was ever instituted by said Minnesota Company to obtain possession of any portion of the mortgaged property.

When the receiver was discharged, the property was directed to be given to the Minnesota Company, which, up to that time, had had no possession, and no opportunity was then offered to contest its rights, and never has such opportunity been presented in this court until this present suit.

It has been claimed that this court, at December term, 1863, in the decision of the case of Soutter, survivor, *vs.* La Crosse, held that the Minnesota Company had become the owner of the equity of redemption. (2 Wallace, 283.) But we do not so understand the opinion in that case. That question was not before the court, and could not be litigated in that case. The counsel for the Minnesota Company in that case resisted the foreclosure of Soutter in behalf of the Minnesota Company and of certain judgment creditors, and insisted that the

Minnesota Company, by virtue of this foreclosure, had become the owner of the equity of redemption.

The court, for the purpose of disposing of his claims under said judgments, took him at his word, and assumed the facts to be as he claimed in that particular, and that being so, his claim under his judgments was at an end, for they were cut off by the foreclosure. There were no facts before the court upon which they could determine the validity of said Barnes mortgage or its foreclosure, and no parties that could litigate it. The court, therefore, could not have decided upon the validity of that foreclosure in that case.

IV.

Admitting the mortgage and foreclosure valid, still the pretended organization of said Milwaukee and Minnesota Railroad Company was premature and unauthorized, for the reason that said sale and purchase was only inchoate, and not complete until the expiration of one year from the date thereof, during which time it was subject to redemption. (Revised Statutes of Wisconsin, 512, § 38.)

The law authorizing the purchasers of railroads to organize as railroad compainies contemplates only absolute purchases, where the purchasers are entitled to the immediate possession of the roads purchased. (Revised Statutes of Wisconsin, 510, § 33.)

V.

The complainants claim that they are entitled to have the lien of their judgment enforced against all the property of the La Crosse and Milwaukee Railroad Company which has not been sold and disposed of on liens prior to theirs, together with all the income, tolls, or revenue arising therefrom, now in the possession of either said La Crosse or Minnesota Companies, or within the control of the court.

JOHN W. CARY,
Of Counsel for Appellants.